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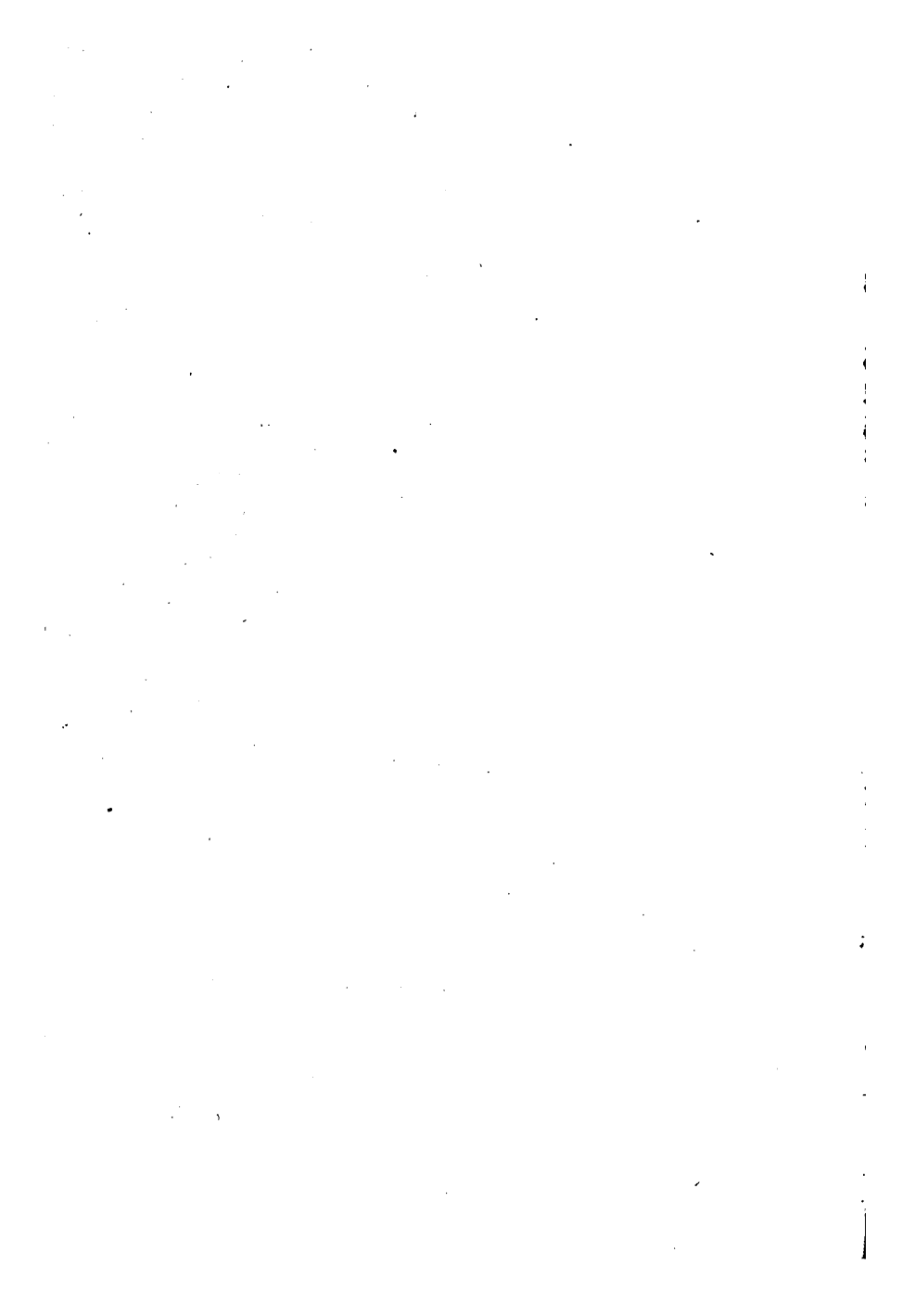
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INTERPLEADER

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TOGETHER WITH

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PREFACE

TO THE THIRD EDITION.



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THE Work ~~has~~ been brought up to date, by
embodying the Rules introduced, and the
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Second Edition.

M. C.

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January, 1900.

PREFACE

TO THE SECOND EDITION.



THE Rules of 1883 having come into operation since the First Edition of this Work was published, such modifications or alterations as those Rules and the Cases decided under them have necessitated, have been embodied in this Edition.

The subject of "Attachment of Debts," which in the First Edition was treated in the same Volume, is now published separately, together with the subject of "Equitable Execution."

M. C.

3, FLOWDEN BUILDINGS, TEMPLE,
February, 1888.

TABLE OF CONTENTS.

	PAGE
TABLE OF CASES	ix

INTRODUCTORY	1
------------------------	---

CHAPTER I.

WHO MAY INTERPLEAD	7
When a Stakeholder may Interplead	7
When a Sheriff may Interplead	29

CHAPTER II.

THE PRACTICE IN INTERPLEADER	47
When Proceedings commenced by a Stakeholder	48
When Proceedings commenced by Sheriff	98
Note on the Practice in the Chancery Division and in Bankruptcy	127

CHAPTER III.

INTERPLEADER IN THE COUNTY COURTS	131
Note on Interpleader in the Mayor's Court	155

APPENDICES.

	PAGE
APPENDIX A.—Statutes and Orders at present regulating Interpleader proceedings	157
APPENDIX B.—Statutes and Orders regulating Interpleader previously to 1863	163
APPENDIX C.—Forms in Stakeholder's Interpleader	170
APPENDIX D.—Forms in Sheriff's Interpleader	180
APPENDIX E.—Forms in Interpleader in the County Courts	190

INDEX	225
-----------------	-----

TABLE OF CASES.

A.		PAGE
ABBOTT <i>v.</i> Richards	114	
Alemore <i>v.</i> Adeane	43	
Allen <i>v.</i> Evans	35	
Allen <i>v.</i> Gibbon	34	
Anderson <i>v.</i> Calloway	32	
Angell <i>v.</i> Baddeley	119	
Angus <i>v.</i> Wootton	55, 104	
Applegarth <i>v.</i> Colley	17	
Armitage <i>v.</i> Foster	125	
Attenborough <i>v.</i> St. Katharine's Dock Co.	13, 25, 26, 27, 89, 93	
Aylwin <i>v.</i> Evans	114	
B.		PAGE
Baker <i>v.</i> Bank of Australasia ..	18	
Bank of Ireland <i>v.</i> Perry ..	29	
Barker <i>v.</i> Dynes	34, 112, 120	
Barker <i>v.</i> Phipson	43	
Barnes <i>v.</i> Bank of England..	20, 97	
Bateman <i>v.</i> Farnsworth	37	
Beale <i>v.</i> Overton	42	
Belcher <i>v.</i> Patten	44	
Belcher <i>v.</i> Smith	15, 20	
Belmonte <i>v.</i> Aynard	28, 91	
Benazech <i>v.</i> Bessett	89	
Bentley <i>v.</i> Hook	34, 45	
Best <i>v.</i> Hayes	13, 25	
Beswick <i>v.</i> Boffey	151	
Bird <i>v.</i> Matthews	70	
Bishop <i>v.</i> Hinxman	35, 123	
Blackmore <i>v.</i> Yates	85	
Bland <i>v.</i> Delano	123	
Blore <i>v.</i> Houston	152	
Bowen <i>v.</i> Bramidge	98	
Bowlden <i>v.</i> Smith	103	
Brackenbury <i>v.</i> Laurie	114	
Braddick <i>v.</i> Smith	13	
Bragg <i>v.</i> Hopkins	126	
Braine <i>v.</i> Hunt	32, 45, 123	
Bransden <i>v.</i> Parker	123	
Brice <i>v.</i> Bannister	22	
Bryant <i>v.</i> Ikey	120	
Bryant <i>v.</i> Reading	57, 58	
Buck <i>v.</i> Robson	22	
Buck, <i>Re</i>	129	
Burlinson <i>v.</i> Hall	22	
Busfield, <i>Re</i>	53	
C.		PAGE
C. <i>v.</i> D.	122	
Candy <i>v.</i> Maugham	21	
Carne <i>v.</i> Brice	72	

TABLE OF CASES.

	PAGE		PAGE
Carpenter v. Pearce	113, 115	Day v. Walduck	36
Carr v. Edwards	96	Death v. Harrison.....	132, 147
Carter v. Lawson	122	Deller v. Prickett.....	89
Cater v. Chigwell	132	Devereux v. John	41
Chase v. Goble	73	De Rothschild v. Morrison..	92
Churchward v. Coleman....	149	Discount, &c. Co. v. Lam-	
Claridge v. Collins	38	barde	111
Clarke v. Chetwode	125	Dixon v. Ensell	43
Clarke v. Lord.....	37, 104, 126	Dixon v. Yates	95
Clench v. Dooley	57	Dobbins v. Green.....	102
Clifton v. Davis.....	96, 97	Doble v. Cummins	55, 103
Collins v. Cliff	119	Donninger v. Hinxman	103
Collis v. Lee	19	Duddin v. Long	39
Colonial Bank v. Warden ..	21	Ducar v. McIntosh	92
Cook v. Allen	41, 44, 103	Duncan v. Caslin.....	29
Coole v. Braham	83		
Cooper v. Asprey.....	120	E.	
Cotter v. Bank of England..	13,		
	92	Edwards v. English	75
Cox v. Balne	40, 46	Edwards v. Matthews	83
Cramer v. Matthews	145	Elliott v. Sparrow	81
Crawshaw v. Thornton	4, 22	Emmott v. Marchant	83
Credits Gerundeuse v. Van		Engelbach v. Nixon	29
Weede.....	28, 53	Evans v. Wright	25
Orellin v. Leland	24	Eveleigh v. Salisbury	55, 103
Crosaley v. Ebers.....	38		
Crump v. Day	44	F.	
Cummings v. Ince	75		
Cusel v. Pariente	94	Farr v. Ward	17
		Fenwick v. Laycock	38
D.		Field v. Cope.....	120
Dabbs v. Humphries ...	124, 127	Field v. G. N. Ry. Co.	9
Dalton v. Midland Ry. Co..	18	Field v. Rivington	98
Darby v. Waterlow	111	Follows, Re	101
Dawson v. Fox	86, 128	Ford, Ex parte	119
Day v. Carr	31	Ford v. Baynton	34, 37

TABLE OF CASES.

ix

	PAGE
Forster v. Clowser	108
Foster v. Pritchard	132
Freshfield, <i>Re</i>	22
Frost v. Heywood.....	52, 90

G.

Gadsden v. Barrow	75
Gaskell v. Sefton	124
Gay v. Pitman	19
Gayton v. Espin	84
Gethin v. Wilks	103
Gladstone v. White	15, 93
Glazebrook v. Pickford	95
Glazier v. Cooke	104, 122
Goodlock v. Cousins	145
Goodman v. Blake	120, 124
Grant v. Fry.....	19
Greatorex v. Shackle	12
Green v. Brown	31
Green v. Rogers	74
Green v. Stevens	76
Gugen v. Sampson	84

H.

Haddow v. Morton	145
Halling, <i>Ex parte</i>	118
Hamlyn v. Betteley	68
Hammond v. Nairn.....	123
Hansen v. Maddox	95, 98
Hargrave v. Hargrave	69
Harrison, <i>Re</i>	118
Harrison v. Forster	38
Harrison v. Payne	11

	PAGE
Harrison v. Wright.....	59
Hartmont v. Forster	98
Harwood v. Betham	14
Haythorn v. Bush	37
Hilliard v. Hanson	114
Hills v. Renny	146
Hockey v. Evans	104, 109
Hollier v. Laurie	114
Holmes v. Mentze.....	35, 45
Holt v. Frost	40
Holton v. Guntrip	32, 45
Hood v. Bradbury	98
Hook v. Ind Coope	115
Hornidge v. Cooper	85
Horton v. Earl of Devon ..	23
Howell v. Dawson	112
Hughes v. Little	65

I.

Ibbotson v. Chandler	105
Ingham v. Walker	10
Inland v. Bushell.....	33
Isaac v. Spilsbury	36, 46

J.

James v. Pritchard	23
James v. Ricknell	101
Jessop v. Crawley	132
Johnson v. Shaw	24
Jones v. Lewis	127
Jones v. Regan	93
Jones v. Williams	132

K.

	PAGE
Kebell <i>v.</i> Philpotts	81
Kimberley <i>v.</i> Hickman	82
King <i>v.</i> Birch	88
Kirk <i>v.</i> Almond	33
Kirk <i>v.</i> Clarke	54
Kotchie <i>v.</i> The Golden Sovereigns	111

L.

Lambert <i>v.</i> Cooper	94, 127
Lambert <i>v.</i> Townsend ...	53, 102
Lashman <i>v.</i> Claringbold....	41
Laurance <i>v.</i> Matthews	9
Lea <i>v.</i> Rossi	31
Levi <i>v.</i> Coyle	56, 88
Levy <i>v.</i> Champneys.....	38
Lewis <i>v.</i> Holding	96
Lewis <i>v.</i> Jones	116
Lindsay <i>v.</i> Barron	23, 28
Linnett <i>v.</i> Chaffers	74
Long <i>v.</i> Bray	125
Lott <i>v.</i> Melville	73
Luard <i>v.</i> Butcher	68
Lucas <i>v.</i> London Dock Co...	28
Luckin <i>v.</i> Simpson	69
Lumb <i>v.</i> Teal	154
Lydall <i>v.</i> Biddle	82
Lyon <i>v.</i> Morris.....	58

M.

McAndrew <i>v.</i> Barker	66, 87
McFee, <i>Ex parte</i>	149
McNan <i>v.</i> Auldenshaw	87
Marks <i>v.</i> Ridgway	67

PAGE

Martin <i>v.</i> Jameson	113
Matthews <i>v.</i> Sims	88
Mellin <i>v.</i> Dumont	90
Melville <i>v.</i> Smark	94, 126
Mercer <i>v.</i> Stanbury	132
Meredith <i>v.</i> Rogers	97
Meynell <i>v.</i> Angell	25
Milan Tramways, <i>Re</i>	22
Mitchell <i>v.</i> Hayne	14
Morewood <i>v.</i> Wilks	72
Morland <i>v.</i> Chitty.....	123, 124
Murdoch <i>v.</i> Taylor	94
Murietta <i>v.</i> South African Co.	15
Mutton <i>v.</i> Young	42, 45

N.

New Hamburg Ry. Co., <i>Re</i> ..	9
Newton <i>v.</i> Moody	14

O.

Ostler <i>v.</i> Brown	39
------------------------------	----

P.

Pariante <i>v.</i> Pennell	56
Parker <i>v.</i> Linnett	92
Patorni <i>v.</i> Campbell	23, 28
Pearce <i>v.</i> Watkins	107
Perkins <i>v.</i> Burton	103
Phillips <i>v.</i> Spry	53, 102
Pitchers <i>v.</i> Edney	93
Pooley <i>v.</i> Goodwin	71, 83
Powell <i>v.</i> Lock	55, 104
Price <i>v.</i> Plummer	70, 72, 79

TABLE OF CASES.

xi

	PAGE
Prosser v. Mallinson	122
Purkiss v. Holland	113
Putney v. Tring	29

Q.

Queen v. Richards	148
Queen v. Stapylton	148

R.

Randall v. Lithgow	17, 21
Reading v. London School Board	9, 21, 52
Reeves v. Barraud	93
Regan v. Serle	11
Rex v. Sheriff of Herts	105
Rhodes v. Dawson	91
Richards v. James	76
Richards v. Jenkins	78
Richards v. Johnson	77
Richardson v. Wright	149
Ridgway v. Fisher	41
Ridgway v. Jones	89
Roach v. Wright	29, 45
Roberts v. Bell	10
Robinson v. Jenkins	10, 27
Robinson v. Tucker	86, 87, 88
Rogers v. Kenney	74
Rooda v. Gun and Shot Co. ...	95
Rusden v. Pope	29

S.

Salmon v. James	36
Saunders v. Perrin	80
Scales v. Sargeson	125
Scarlett v. Hanson	46, 109

	PAGE
Schroeder v. Hanrott	80
Scott v. Lewis	33
Searle v. Matthews	93, 120, 124
Sharpe v. Redman	12
Sheriff of Oxon, <i>Re</i>	35, 123
Shingler v. Holt	70, 77
Skipper v. Lane	42
Slaney v. Sidney	12
Smith v. Critchfield	34, 114
Smith v. Darlow	106, 122
Smith v. Keal	116
Smith v. Saunders	12, 36
Smith v. Wheeler	10
Smith v. Yorke	84
Staley v. Bedwell	96
Stanley v. Perry	69, 81
Stern v. Tegner	107
Streeter, <i>Ex parte</i>	122, 130
Studham v. Stanbridge	153
Sturges v. Claude	29
Summers, <i>Ex parte</i>	154
Swaine v. Spencer	127

T.

Tanner, <i>Ex parte</i>	148
Tanner v. European Bank	26, 28
Tarleton v. Dummelow	35
Tarn, <i>Re</i>	58
Thomas v. Kelly	64
Thompson v. Wright	16
Tinkler v. Hilder	132
Todd v. M'Keevin	122
Tomlinson v. Land Corpora- tion	90
Toppin v. Buckerfield	116
Toulmin v. Edwards	43

	PAGE		PAGE
Trickett v. Girdlestone	126	Walters v. Nicholson	10
Tucker v. Morris	15	Waterhouse v. Gilbert	58
Turner v. Mayor, &c. of		Webb v. Shaw	57
Kendal	20, 23	Webster v. Delafield	56, 104
		Webster, <i>Ex parte</i>	126
U.		Weeks v. Wood	82
Underden v. Burgess	125	West v. Rotherham	124
Usher v. Martin	78	Westerman v. Rees	57
		White v. Watts	81
V.		Whitehead v. Procter	149, 152
Vallance v. Nash	154	Williams v. Crossling	89
Van der Kan v. Ashworth	53	Williams v. Grey	84
Victor v. Cropper	56	Williams v. Mercier	87
		Wills v. Hopkins	127
W.		Winter v. Bartholomew	113
Walker v. Bradford Old		Woodford v. Bosanquet	71
Bank	22	Woollen v. Wright	115
Walker v. Kerr	54, 105	Wright v. Freeman	12
Walker v. Olding	116		
		Y.	
		Young v. Kitchen	22

INTERPLEADER.

INTRODUCTORY.

To a person in the possession of property admittedly not his own, and whose only anxiety was to hand it over to the rightful owner, out of the two or more claimants who were harassing him in respect of it, the Common Law and the Common Law Courts, until the year 1831, when the Interpleader Act was passed, gave very little assistance.

Some very slight assistance indeed these Courts did give to a person so situated. Thus, if two persons deposited deeds with a third person to be re-delivered by such depositary according to the terms of an agreement, and one of them then brought an action of *detinue* against the depositary, the latter could give notice of suit to the other depositor and compel him to appear and become defendant in the action in his stead. This proceeding was called *garnishment*, and the substituted defendant was called a *garnishee*.

Interpleader at Common Law before 1831.

Again, if under the circumstances above mentioned, *both* the depositors brought actions of detinue against the depositary, or if actions of detinue were commenced severally by two persons against a third who had found the deeds, the third person was in either case allowed to call upon the two plaintiffs to *interplead*, and the proceeding was called interpleader.

But these remedies by garnishment and interpleader being only available in actions of detinue and under the special circumstances referred to, very little real advantage was gained by them, and with the further exception of a right of interpleading (α) where two writs of *quare impedit* were brought for the same avoidance, (β) two writs of *ward* for the same wardship, (γ) each of two persons was found by office in different counties, to be heir of a tenant to the King, the remedy by way of interpleader was unknown to the Common Law.*

Interpleader suit in Chancery.

The only mode therefore by which a luckless stakeholder harassed by conflicting claims could obtain relief was by filing a bill in Chancery. That Court very early undertook to assist a person so situated, provided that he complied strictly with certain rules and conditions, which it laid down as

* Those who care to pursue the antiquarian learning about the old Common Law garnishment and interpleader, can do so in Viner's "Abridgment," vol. ix., p. 419 *et seq.* "Enterpleader"; and in Reeves' "History of the Law," vol. ii., p. 637 *et seq.*, Finlason's edition.

necessary for his observance, if he wished to be relieved. This jurisdiction that Court continued to exercise according to its own rules until the year 1875, exercising, indeed, after the year 1831, a *concurrent* jurisdiction with Common Law Courts in the matter.

Although the old jurisdiction of the Court of Chancery, the principles by which it was guided, and the practice by which its proceedings were regulated, now no longer exist, or at least have fallen into desuetude, nevertheless it may be useful here shortly to sketch the nature of a bill of interpleader in Chancery, more especially as many of the principles now regulating interpleader practice have been adopted from the practice in Chancery.

To entitle a person to file a bill of interpleader in Chancery, it was essential (α) that he should be in the possession of property or admit that he owed a debt or duty: (β) that he claimed no interest in the property himself, or was only anxious to discharge his debt: (γ) that he had received notice of conflicting claims to the property or debt in question: (δ) that he was not under any liability to any of the defendants beyond those which arose from the title to the property in contest: (ϵ) that the claimants claimed not under adverse titles, and that their claims were not of a different nature.

If he could comply with these conditions he would proceed to file his bill *stating* his position and rights, and stating the claims of the claimants. He

prayed that they should interplead and that he should be indemnified, and if he was already being sued at law by either claimant, he would further ask that the action at law should be stayed. To his bill the plaintiff would annex an affidavit alleging that he did not collude with either of the claimants; and if the subject-matter in dispute was money, he would either pay it into Court, or offer by his bill to do so.

The bill could be filed against the Crown; and also where the defendants were out of the jurisdiction.

At the hearing, if the question between the defendants were ripe, the Court could decide between them on the merits; otherwise it would direct proper inquiries, or perhaps the trial of an issue at Common Law; and the costs of the proceedings would, as a rule, follow the event.*

Such, in very brief outline, was the practice in Chancery, as it existed till 1875.

Inter-
pleader
Act, 1831.

Meanwhile, in 1831, the Interpleader Act (1 & 2 Wm. IV. c. 58) had conferred a jurisdiction in interpleader on the Common Law Courts, and had mapped out a procedure for its exercise. It thus happened that from 1831 till 1875 there were two

* For full details as to the former Chancery jurisdiction and practice in interpleader, see Story's "Equity Jurisprudence," ch. xx. (12th edition), and Daniell's "Chancery Practice" (ed. 1871), pp. 412-418, and the cases there referred to. See particularly *Crawshaw v. Thornton*, 2 M. & Cr. p. 1.

distinct, though in some respects analogous, methods of interpleading: both, too, independent of one another.

This being the state of things, it was enacted by Rule 2 of Order I. of the Rules of the Supreme Court, 1875, that "With respect to interpleader the procedure and practice now used by Courts of Common Law under the Interpleader Acts 1 & 2 Wm. IV. c. 58 and 23 & 24 Vict. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence."

Rules of
S. C. 1875,
Order I.
rule 2.

Under this Order, therefore, the practice adopted in the High Court of Justice was the Common Law practice under the Interpleader Act, 1831, and the Common Law Procedure Act, 1860.

By the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 49), the Interpleader Act of 1831, and all the provisions of the Common Law Procedure Act of 1860 relating to interpleader, except s. 17, were repealed, and by the Rules of the Supreme Court of 1883 the Rules of the Supreme Court of 1875 were annulled.

In lieu of the provisions as to interpleader so repealed and annulled, interpleader was dealt with in Order LVII. of the Rules of the Supreme Court of 1883, and it is upon the provisions of the various rules of this Order, and of s. 17 of the Common

Order
LVII. of
the Rules
of the S. C.
1883.

INTERPLEADER.

Law Procedure Act, 1860, that the existing law and practice in interpleader is based. It will be found, however, that these new Rules make but slight alteration in the law and practice as they stood under the Acts of 1831 and of 1860.

CHAPTER I.

WHO MAY INTERPLEAD.

ORDER LVII. of the Rules of the Supreme Court, 1883,* like the Interpleader Act of 1831,† confers the right of interpleading upon two classes of persons: (1) ordinary stakeholders and persons in the nature of stakeholders; (2) sheriffs and like officers of the Court. In pursuing, therefore, the initial inquiry as to what must be a person's position to entitle him to adopt this remedy, it will be well to consider: (1) what must be the position of an ordinary person; (2) what must be the position of a sheriff.

1. WHEN INTERPLEADER PROCEEDINGS MAY BE COMMENCED AT THE INSTANCE OF A STAKEHOLDER, OR PERSON IN THE NATURE OF A STAKEHOLDER.

The Rules bearing on this question are Rule 1 (a) ^{Order LVII.} and Rules 2 and 3 of Order LVII. of the Rules of ^{rules 1 (a), 2, and 3.} 1883.

Rule 1 (a) provides as follows:—

Relief by way of interpleader may be granted: (a) where the person seeking relief (in this Order

* See the order set out in full, *post*, at pp. 157–161, in Appendix A.

† See the Act and other statutory provisions previously regulating interpleader set out in full, *post*, at pp. 163–169, in Appendix B.

INTERPLEADER.

called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise: (α) that the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and (β) that the applicant does not collude with any of the claimants; and (γ) that the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

Applicant
must be
being sued,
or expect
that he will
be sued.

1. The first point then to notice is that the applicant must either (1) be being sued, or (2) expect that he will be sued by the claimants.

Under the Act of 1831, and the Rules of 1875, it was necessary that the applicant should be a defendant at the suit of one of the claimants at the time of his application for interpleader. Thus in *Parker v. Linnett* (2 Dowl. p. 562), it was held that a person who had been merely *threatened* with legal proceedings, and against whom no action had as yet been brought, was not entitled to interplead.

Interplea-
der under
Judicature

However, even before the new Rules of 1883, in the case mentioned in section 25, sub-section 6, of the

Judicature Act, 1873 (see this sub-section set out at Act, 1873, sect. 25, sub-s. 6. length, *post*, at p. 161, in Appendix A.), of a debtor, trustee or other person liable in respect of a debt or chose in action thereby rendered assignable, and against whom conflicting claims are made in respect of such debt or chose in action, the interpleader proceedings he was thereby entitled to take might, by the very terms of the sub-section, be commenced by him before any action had been commenced against him. (See per Quain, J., *Re New Hamburg Railway Company*, W. N. 1875, p. 239; per Field, J., in *Field v. Great Northern Railway Company*, Jud. Ch. Feb. 22nd, 1878; and *Reading v. School Board for London*, L. R. 16 Q. B. D. 686.)

The alteration made by Rule 1 (a) is based upon the former Chancery practice in interpleader suits, where it was never necessary that the party filing the interpleader bill should be being sued at the time by either of the claimants, either at law or in equity.

2. The subject-matter of the applicant's liability must be either a debt, money, goods or chattels. Applicant's liability must be a debt, money, goods or chattels.

The form of the action was important under the Act of 1831, since the relief was confined to the cases of persons sued in assumpsit debt, detinue and trover; and so in *Lawrence v. Matthews* (5 Dowl. p. 149; 2 H. & W. p. 123), where the declaration contained a count in case as well as [in trover, it was held that the defendant could not interplead. Forms of action, however, no longer exist; the Common Law Procedure Act, 1860, enabled a person

sued in respect of a Common Law claim for the recovery of money or goods to interplead; and with this it will be seen that the terms of Rule 1 (a) substantially agree.

Unliqui-
dated
damages.

Unliquidated damages were not within the Act of 1831. "The claims," said Williams, J., in *Walters v. Nicholson* (6 Dowl. p. 517), "must be to something of a definite and tangible nature." And this is still the case (see per Pollock, B., in *Ingham v. Walker*, 31 Sol. J. 271); nevertheless a distinction must be made between cases of claims to unliquidated damages *simpliciter*, and cases where there is a real subject-matter of litigation, and the claim for damages *ultra* is merely added for what it is worth. (As to these latter cases, see *post*, pp. 26, 27.)

Title
deeds.

Title deeds are within the Act. The contrary was held in *Smith v. Wheeler* (1 Gale, p. 163; 3 Dowl. p. 431); but this case must be considered as overruled by *Roberts v. Bell* (7 Ell. & Bl. p. 323; 3 Jur. N. S. p. 662), where the full Court of Q. B. held that the depositary of title deeds, who was sued for them by A., and had a claim for them made against him by B., was entitled to interplead.

Choses in
action.

It seems, too, that a chose in action is a chattel within the meaning of the Act and Order. Thus in *Robinson v. Jenkins* (L. R. 24 Q. B. D. p. 275), a case of shares in a joint-stock company, Fry, L. J., says: "This (the word 'chattels') is one of the widest words known to the law in its relation to personal property."

3. The applicant must be in possession of the goods or money, the subject-matter of litigation. This is essential; for Rule 2 (c) requires that he should satisfy the Court or a Judge that he is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a Judge may direct. The reason for this is obvious: The person to be assisted must be one who is in doubt as to what he *ought to do*, not one who has already settled the matter for himself. Further, the Court, if it interferes at all, will do so thoroughly and effectually, and see that the property in dispute reaches the hands of the rightful owner.

Applicant must be in possession of subject-matter of litigation.

Of course, if the applicant be sued for a debt, it is enough, *e rerum natura*, if he be willing to pay it to the claimant entitled to it.

Thus in *Regan v. Serle* (9 Dowl. p. 193; and 1 W. P. C. 131), where the defendant was the acceptor of a bill of exchange, of which both the plaintiff and a third party claimed to be the lawful holders, it was held that the defendant might interplead.

4. The applicant must have received clear and distinct notice of the claimants' claims.

Clear notice of adverse claims necessary.

A vague rumour or a mere expectation that some one is going to make a claim will not entitle him to interplead.

Thus in *Harrison v. Payne* (2 Hodges, p. 107), it was held that the defendant, having no just expectation of being sued by the third party, was not

entitled to interplead. See to the same effect *Sharp v. Redman* (1 Will. Woll. & D. p. 375).

Adverse
claims
must be in
respect of
same
subject-
matter.

5. The claimants' claims must be in respect of the same subject-matter.

Thus in *Wright v. Freeman* (48 L. J. C. P. p. 276), where the defendant as auctioneer had sold a horse to the plaintiff, and was sued by the plaintiff for damages for breach of warranty of the horse, while the original owner of the horse claimed from the defendant the price which he had received from the plaintiff, interpleader was not allowed. (Cf. too, *Ingham v. Walker*, 31 Sol. J. 271; *Smith v. Sandars*, 37 L. T. 359, and *Greator v. Shackle*, L. R. 2 Q. B. 249 (1895).)

So literally indeed was this rule formerly followed, that in *Slaney v. Sidney* (3 D. & L. p. 250; 14 M. & W. p. 800; 9 Jur. p. 995; 15 L. J. Ex. p. 72), where the defendant was sued by A. for the price of tea sold to him by A., and sued by B. for the conversion of warrants representing the tea, it was held that he could not interplead. "The one party," said Parke, B., "seeks to have the benefit of a contract and the other the subject-matter of it." This case would hardly now be followed, however; and the Courts would probably now allow interpleader where the question at issue was substantially the same, although the form of the action might be different in the two cases.

Although, however, the adverse claims must be in respect of the same subject-matter, the remedies

sought need not be co-extensive, and any ulterior claims that either party may put forward against the applicant for damages or otherwise will be reserved till the main issue between the adverse claimants has been decided. (See more on this point, *post*, at pp. 26, 27).

6. The applicant must claim no interest in the subject-matter in dispute other than for charges or costs, *i.e.*, he must be a mere stakeholder.

Applicant must claim no interest in subject-matter of litigation.

The cases in which the question has arisen whether or not the applicant has an interest in the subject-matter have been those of warehousemen and dock companies claiming a lien on the goods for storage, and auctioneers claiming a lien for their commission. Thus in *Braddick v. Smith* (2 Moore & S., p. 131; 9 Bing. p. 84, S. C.), it was held that a wharfinger claiming a lien could not interplead if the lien only attached in respect of one of the parties by whom the goods were claimed. In *Cotter v. The Bank of England* (3 Moore & S. p. 180; 2 Dowl. p. 728, S. C.), however, it was held that if the defendants claimed a lien on the goods themselves and did not seek to attach them against either party, they were entitled to interplead; and this was considered the clear law in the recent case in the Court of Appeal of *Attenborough v. St. Katharine's Docks* (L. R. 3 C. P. D. p. 450).

As to an auctioneer's right to interplead, although claiming a lien on the proceeds of the sale for his commission, see *Best v. Heyes* (32 L. J. Ex. p. 129;

3 F. & F. p. 113), where, although, as the adverse claimant allowed the defendant's claim to deduct his commission, the point was ultimately not decided, yet the Court of Exchequer all entertained a strong opinion that an auctioneer, although claiming a lien for commission, was entitled to interplead, and refused to follow the decision in Chancery in *Mitchell v. Hayne* (2 Sim. & S. p. 63; 25 R. R. 151), where it was held that the auctioneer in such a case could not file a bill of interpleader. "The defendant," said Martin, B., "claims no interest in the original corpus of the property."*

Rule 2 (a), by the use of the words "other than for charges or costs," adopts the test above suggested by Martin, B.

Inter-
pleader
allowed,
though
claim only
to a lien.

7. The applicant may interplead, although one of the claimants does not claim an absolute right of property in the subject-matter, but only a lien.

This was decided in *Harwood v. Betham* (1 L. J. Ex. N. S. p. 180).

* The case of *Newton v. Moody* (7 Dowl. p. 782; 3 Jur. p. 42; 1 W. W. & H. p. 554), in which, where money was due from the defendant to the sister of the plaintiff, and was secured by a promissory note given to the plaintiff by the defendant under which certain sums had been paid to the plaintiff by the defendant, it was held, on the sister forbidding any more money being paid to the plaintiff under the note, and the plaintiff commencing his action, that the defendant could not interplead, "as it was a matter of interest to him to whom he paid the note," would probably not be followed now.

8. The applicant must not be guilty of any collusion with either party.

Applicant must not collude with either party.

Active collusion would obviously be fatal; but short of this, if the relations between the applicant and either claimant are such as to lead the Court to suspect that there is any understanding between them, it will, in the exercise of its discretion, refuse to interfere. Thus in *Belcher v. Smith* (9 Bing. p. 82; 2 M. & S. p. 184, S. C.), the Court refused to interfere where the defendant was the uncle and father-in-law of the claimant, and had officiously interposed, by receiving the moneys out of which the claims arose, through his nephew. In *Tucker v. Morris* (1 Dowl. p. 639; 38 R. R. 583) it was held that after the defendant had so far identified himself with the interests of the claimant as to take an indemnity from him, he must be content with that, and the Court would not interfere on his behalf. In *Gladstone v. White* (1 Hodges, p. 386), where the defendant seeking to interplead had refused to give up the goods on receiving an indemnity from the plaintiff, who thereupon brought an action in which he made both him and the claimant co-defendants, it was held that the defendant was entitled to relief under the Act.

In *Murietta v. The South African Company* (62 L. J. Q. B. 369), where the applicant for relief had entered into an agreement with the plaintiffs, binding himself to oppose the claimants' claims, it was held, on the claimants' objection, that this was fatal to the

applicant's right to interplead. "The applicant," said Charles, J., "has bound himself by agreement to play the game of the Muriettas. That seems to me to amount to collusion."

However, the case of *Thompson v. Wright* (L. R. 13 Q. B. D. 632), shows that in determining whether the previous acceptance of an indemnity by the applicant should or should not be fatal to his application, on the ground that it amounts to collusion with the claimant who gave it, regard must be had to the quarter from which the objection of collusion comes; and that if it comes from the claimant himself who has given the indemnity, and not from the other claimant, it will not necessarily be fatal. In that case auctioneers, on the instructions of Wright, were proceeding to sell goods, when Thompson gave the auctioneers notice that they were his. On receiving an indemnity from Wright, they nevertheless proceeded to sell the goods, and then applied for leave to interplead as to the proceeds. Thompson raised no objection to the sale as being unauthorized, and was quite ready that the question between him and Wright should be determined by an interpleader issue as to the proceeds; but to this Wright objected. The Court, nevertheless, allowed the auctioneers to interplead.*

* It will be observed that it does not appear whether the indemnity was to protect the auctioneers merely against the consequences of a wrongful sale, or, also, against the consequences of handing over the proceeds to the party giving the indemnity. If the

9. If the applicant be the stakeholder of a sum deposited with him to abide the event of an illegal race, he cannot interplead. This was decided in *Applegarth v. Colley* (2 Dowl. N. S. p. 223).

Depository of fund to abide event of illegal race cannot interplead.

10. If the applicant may be liable to both claimants he cannot interplead.

If applicant may be liable to both, he cannot interplead.

Thus in *Farr v. Ward* (2 M. & W. p. 844; M. & H. p. 244), where the defendant had sent the plaintiff his blank acceptance in payment for certain cattle, which acceptance the plaintiff never received, but it came into the hands of the claimants as *bond fide* holders for value in the form of a bill properly drawn and endorsed, it was held by the Court of Exchequer that, as the defendant might be liable to both the plaintiff and the claimant, he could not interplead. (See, too, *Randall v. Lithgow*, L. R. 12 Q. B. D. 525.)

11. Very analogous to this last rule is the rule that where in the proposed issue between the claimants either of them would not have the same position, or could not assert the same rights, as he could assert against the applicant, there interpleader will not be allowed.

Claimants *inter se* must be able to assert same rights as each could against applicant.

former were the fact, then the auctioneers were not in fact indemnified against anything in respect of which they applied for relief. If the latter, then no doubt the case would be an authority for the broad proposition that the objection to the application on the ground that the applicant has accepted an indemnity from one of the claimants can only come from the other claimant, and the latter may waive it if he likes.

Thus in *Dalton v. The Midland Railway Company* (12 C. B. p. 458), where the Company were sued by the owner of stock for unpaid dividends, which were claimed by a third party, who had *bonâ fide* become registered as the owner of the stock in the Company's books, both he and the Company being ignorant that he claimed through a forged transfer, it was held as *one* ground for refusing the Company relief under the Act, that in the issue between the third party and the plaintiff, the third party as against the plaintiff could not set up the question of estoppel, which, as against the Company, he claimed to be entitled to set up. So, too, in the case of *Baker v. The Bank of Australasia* (26 L. J. C. P. p. 93; 1 C. B. N. S. p. 515; 3 Jur. N. S. p. 187), where the defendant Bank had accepted a bill of exchange drawn payable to the order of S. A., and S. A. endorsed it to the plaintiff, and the husband of S. A. then gave the Bank notice not to pay the bill without *his* endorsement, the Court of Common Pleas refused to allow the Bank to interplead, on the ground that in an issue between the plaintiff and the husband, the plaintiff would not be entitled to set up as against the husband the question of estoppel which, as against the Bank, the acceptors, he was entitled to set up. "The question," said Cockburn, C. J., "whether the acceptor is not estopped from denying the payee's right to indorse could not be raised" (*i.e.*, in an issue between the plaintiff and husband), and, said Crowder, J., "I apprehend the meaning of the In-

terpleader Act is to substitute parties in trying the very question in the case." It must not, however, be supposed from this that the mere fact that the applicant has entered into any contract, or assumed a personal obligation towards either claimant, nor the fact that the remedy which the claimants would have open to them in a contest *inter se* would not be coextensive with the remedy they either of them claimed against the applicant, are such as to disentitle the applicant to relief. (As to these exploded doctrines, see *post*, at pp. 22—27.)

12. A more doubtful rule would seem to be deducible from the cases of *Grant v. Fry* (4 Dowl. p. 135) and *Collis v. Lee* (1 Hodges, p. 204), if these cases are still good law; *viz.*, that the applicant cannot interplead unless one of the adverse claimants *must* be entitled to the subject-matter of litigation. One of the claimants *must* be entitled to the property.

In both these cases, the claimants claimed from the applicant the reward offered for the apprehension of a criminal; and it was held that, as neither claimant might really be entitled to the reward, the case was not within the Act. In *Gay v. Pitman* (1 Jur. p. 776; 5 Scott, p. 795), however, the validity of these decisions seems to have been doubted, and under exactly similar circumstances a rule *nisi* was granted. It is submitted that in such cases it is rather for the applicant to decide whether he is sufficiently protected against ulterior claims than for the Court to decide it for him; and that if he prefers to have the matter settled at once, as

between the immediate claimants, and to run the risk of further claims afterwards arising, he is entitled to have the assistance of the Court in carrying out that course.

Applicant
must not
be remiss.

13. The applicant must not be remiss in asking for relief; he is asking for a favour, and he must deserve it. Under the old practice, a defendant who had twice obtained time to plead, was allowed even then to interplead (*Barnes v. Bank of England*, Will. Woll. & H. p. 50; 7 Dowl. 319). It would not, however, be prudent for an applicant now to postpone his application until after he had twice obtained time for the delivery of his statement of defence. In *Turner v. The Mayor, &c. of Kendal* (2 D. & L. p. 197), where the assignees of a bankrupt sued the defendants for money due for work and labour done by the bankrupt for, and under a contract with, the defendants, and the bankrupt's son claimed the monies, saying that *he* had done the work, the Court refused to give the defendants any relief, on the ground that a person ought to know with whom he contracts, that it is his own fault if he does not, and that it is not for the Court to assist him in such a case. It should always be remembered, too, to quote the words of Tindal, C. J., in *Belcher v. Smith* (9 Bing. p. 82), "that the Act of Parliament is not compulsory, but authorizes the interposition of the Court, at its discretion, upon proper occasions, and that the duty of the Court is to see that the party applying for the exercise of

this discretion has not voluntarily put himself in the situation from which he calls upon the Court to extricate him." (Cf. *Randall v. Lithgow*, L. R. 12 Q. B. D. 525.)

Now that the applicant can interplead, before he is sued, cases may arise in which it would be remiss on his part not to apply until after he is sued.

(14) Interpleader will not be granted if the Crown be a party to the proceedings. No interpleader, if Crown a party to the proceedings.

Thus in *Candy v. Maugham* (1 D. & L. p. 745; 13 L. J. C. P. 17), where the Crown was in the position of plaintiff, the defendant was not allowed to interplead.

(15) The Interpleader Act does not apply to the Colonies (per Parke, B., *Colonial Bank v. Warden*, 5 Moore P. C. C. 340; 10 Jur. 745).

By 11 & 12 Vict. c. 86, § 10, it was extended to the Stannaries.

16. The applicant is entitled to interplead as to part of the subject-matter in dispute, if he admits his liability as to that, even though he dispute it as to the residue. Applicant may interplead as to part of subject-matter claimed, though he disputes liability for the residue.

Thus in *Reading v. School Board for London* (L. R. 16 Q. B. D. 686), where the applicant admitted his liability in respect of a sum of £861, he was allowed to interplead, although he disputed his liability in respect of a further sum of £115. "I cannot understand," said Wills, J., "why relief should not be granted as to £861, and the claim against the defendants satisfied as to that amount

because another £115 is said to be due from them : to so hold would be to inflict unnecessary injustice."

Judicature
Act, 1873,
s. 25,
sub-s. 6.

With regard to the right of a debtor or trustee to interplead under s. 25, sub-s. 6, of the Judicature Act, 1873, already referred to (*ante*, p. 9), it need only be said that, though the application *may* be made under the sub-section, even though the applicant is already being sued by either the assignor or assignee, the proper course in such a case is to apply for relief in the action, and not under the sub-section. (*Reading v. School Board for London*, L. R. 16 Q. B. D. 686.)

As to what constitutes an assignment within the meaning of the sub-section, see *Brice v. Bannister*, L. R. 3 Q. B. D. 569; *Buck v. Robson*, L. R. 3 Q. B. D. 686; *Young v. Kitchen*, L. R. 3 Ex. D. 127; *Walker v. Bradford Old Bank*, L. R. 12 Q. B. D. 511; *Burlinson v. Hall*, L. R. 12 Q. B. D. 347; *In re Freshfield's Trust*, L. R. 11 Ch. D. 198; and *In re Milan Tramways Company*, L. R. 25 Ch. D. 587.

Rule in
Crawshay
v. Thornton
as to
personal
obligation.

There were one or two rules adopted by the Common Law Courts in the early history of interpleader under the Act of 1831, which much impeded its beneficial operation. One of these was the rule which was adopted from the rule in Chancery suits of interpleader, as laid down by Lord Chancellor Cottenham in *Crawshay v. Thornton* (2 Myl. & Cr. p. 1), *viz.*, "that where the party seeking to interplead had entered into any contract with, or lay

under any personal obligation towards, either claimant, he would not be allowed to do so." The plaintiff (in an interpleader suit) must not, according to Cottenham, L. C., be under any obligation to either of the defendants beyond those which arise from the title to the property in question. The result was that the operation of the Act was much curtailed, as in most cases it is probable that the holder of the goods or money has entered into some obligation, or recognized or held out some right or title of one of the claimants. Thus in *James v. Pritchard* (7 M. & W. p. 216; 8 Dowl. p. 890; 4 Jur. p. 1188), the purchaser of a rick of hay, when sued for the price thereof by the seller, was not allowed to interplead, because it was said that a purchaser could not call upon his vendor to interplead with a third party. So, too, in *Patorni v. Campbell* (12 M. & W. p. 277; 1 D. & L. p. 397; 13 L. J. Ex. p. 89), where the defendant had written to the plaintiff promising to hold at his disposal the proceeds of a bill; and in *Lindsey v. Barron* (6 C. B. p. 291), where the defendant's testator had given a *written undertaking* that a box of plate should be part of the plaintiff's security for a loan, it was held that the defendant could not interplead. (See, too, *Horton v. Earl of Devon*, 4 Ex. p. 497; 19 L. J. Ex. p. 52; 7 D. & L. p. 206, and *Turner v. Mayor, &c. of Kendal*, 13 M. & W. p. 171.) However, even before the Common Law Procedure Act of 1860, this rule was not acted upon

by the Courts with literal strictness. Thus in *Johnson v. Shaw* (4 M. & G. p. 916; 12 L. J. C. P. p. 112), where the defendant was sued by the assignees in bankruptcy of one Ridgway for goods sold and delivered, and a third party claimed to receive the price on the ground that Ridgway was his factor, the Court allowed the defendant to interplead; and in *Crellin v. Leland* (6 Jur. p. 733), where the defendants, bankers, were sued by the plaintiff for the recovery of monies deposited with them by the plaintiff, and they sought to interplead on the ground that the monies were claimed by a third party, who alleged that he had become the husband of the plaintiff, since the deposit, it was held that they were entitled to do so.

Abolished
by C. L. P.
Act, 1860.

By the Common Law Procedure Act, 1860, § 12, it was provided that interpleader might be granted "although the titles of the claimants to the money, goods or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another;" and Rule 3 of Order LVII. is but a reproduction of this rule.

It is certainly not easy to see how this provision exactly meets the question of disability arising from any special liability of the applicant to either claimant, but (*per* Blackburn, J., in *Meynell v. Angell*, 32 L. J. Q. B. p. 14), "the section enables the Court to give relief whenever it appears in the particular case the relief will be complete and just, even though

the claims had not a common origin and were adverse and independent, so that it might possibly be the case that the relief would not be complete and just," and (*per* Bramwell, L. J., in *Attenborough v. St. Katharine's Dock Company*, L. R. 3 C. P. D. p. 450), "*Crawshay v. Thornton* was decided before the passing of the Common Law Procedure Act, 1860, § 12; and from my own knowledge, as one of the Common Law Commissioners, I can say that it was intended to do away with the effect of that decision." Accordingly, in *Meynell v. Angell* (32 L. J. Q. B. p. 14), where the defendant was sued for money due and work done by the plaintiff, with whom he contracted for the performance of the work, and a third party gave the defendant notice that the plaintiff was but his agent in making the contract and doing the work, it was held that the defendant was entitled to interplead. Again, in *Best v. Hayes* (32 L. J. Ex. p. 129; 1 H. & C. p. 718), where the defendant, an auctioneer, had received goods to sell for the plaintiff, and before he had paid over all the proceeds of the sale to him, received notice of a claim from the claimant not to pay over the residue, it was held that he might interplead. In *Evans v. Wright* (13 W. R. p. 468), where the defendant had treated the plaintiff as his tenant, and, as such, had both received rent from him, given him notice to quit, and had agreed with him as to the amount due from the defendant in respect of a valuation for tenant-right, and where this sum for tenant-right

Subsequent cases on the point.

valuation was claimed by the plaintiff's father, who was the original tenant of the premises from the defendant, it was held that the defendant might interplead. So in *Tanner v. The European Bank* (L. R. 1 Ex. p. 261), where the defendants had been entrusted by the plaintiff with a policy of marine insurance for the purpose of collecting monies due in respect of a loss, and while the policy was still in their hands, it was claimed by a third party, it was held by the Court of Exchequer that the defendants could interplead. Lastly, in *Attenborough v. St. Katharine's Dock Company* (L. R. 3 C. P. D. p. 450; 47 L. J. C. P. 763; 38 L. T. 404; 26 W. R. 583), where the defendants were sued for the detention of wine represented by dock warrants issued by the defendants, and endorsed for value to the plaintiff, and a claim was made to the goods by a third party, it was held by the Court of Appeal (overruling the decision of the Common Pleas Division), that the defendant company might interplead, the decisions in *Meynell v. Angell*, *Best v. Hayes*, and *Tanner v. European Bank* were approved of, and *Crawshay v. Thornton* pointed out to be obsolete. Brett, L. J., said, "I cannot think that in this case there was any estoppel, but I confess that in my view, although a defendant in the possession of goods may be technically estopped from denying the plaintiff's claim to them, yet if a *bonâ fide* claim is made to them by a third person, a judge ought to disregard the technical estoppel, and to

direct an issue under the Interpleader Acts to try the question as to the property between the plaintiff and the claimant." (Cf. *Robinson v. Jenkins*, L. R. 24 Q. B. D. 275.)

Very analogous to the above exploded doctrine was the rule that where the rights claimed against the defendant by the plaintiff and the third party are not *coextensive*, there the Court would not allow interpleader. This was the *ratio decidendi* of the decision of the Common Pleas Division in the case of *Attenborough v. St. Katharine's Dock Company*, but the Court of Appeal, in reversing that judgment, refused to recognize any such rule. Lord Justice Bramwell said, "I will assume that the plaintiffs have substantial claims (for damages), and whatever orders may be ultimately made in these actions, care will be taken to preserve any claims for damages which the plaintiffs fancy they can enforce;" and *per* Brett, L. J., "I cannot agree that in order to entitle a defendant to interplead, the remedy of the plaintiff against the claimant must be coextensive with the remedy against him;" and again, "I do not think that the statutes apply merely where the opposing claims are coextensive: I think that they have a wider construction." The proper course in such cases is that mentioned by Bramwell, L. J., above, *viz.*, to reserve any question of ulterior damage, or the like, till the main issue between the two claimants has been decided.

This course seems indeed to have been indicated

Phyllis
Rule as
to co-
extensive
remedy.

Not recog-
nized by
C. A. in
*Atten-
borough's*
case.

as early as the case of *Lucas v. London Dock Company* (4 B. & Ad. p. 378), where the claimant not appearing was barred, and the plaintiff was allowed to proceed, if he liked, for any special damage sustained by the detention of the wine, the subject-matter of litigation. (See, too, judgment of Bramwell, B., in *Tanner v. European Bank*, L. R. 1 Ex. p. 264).

Foreigner
residing
out of the
jurisdiction
can be
called on
to inter-
plead.

It was formerly thought that an interpleader could not be allowed if one of the claimants were a foreigner residing out of the jurisdiction of the Court (see to this effect *Patorni v. Campbell*, 12 M. & W. p. 277, and *Lindsey v. Barron*, 6 C. B. p. 291), owing to the difficulty of dealing with such a person. However, on the objection being taken in *Attenborough's case* that the claimant was a foreigner, out of the jurisdiction, Bramwell, L. J., said, "It has been suggested that the defendants ought not to be allowed to interplead because the claimant Lopez is a foreigner residing out of the jurisdiction of the High Court. This is no ground for rejecting this application, although it may be a reason for making him give a security for costs, or having him altogether barred."

Again, in the case of *Belmonte v. Aynard* (L. R. 4 C. P. D. pp. 221, 352), where the claimants resided abroad, no question was raised at all as to the propriety of interpleader proceedings in such a case, the whole contest being as to whether security for costs should be given.

In the more recent case of *Credits Gerun-*

deuse v. Van Weede (L. R. 12 Q. B. D. 171) where the claimant was a Spaniard residing in Spain, the Court, after consideration, granted leave to the applicant to serve an interpleader summons out of the jurisdiction upon the claimant. (See on this case the remarks of L. J. Cotton, in *In re Busfield*, L. R. 32 Ch. D. at p. 132).

It was greatly discussed in former times as to whether the Common Law Courts could allow interpleader when there was anything of an equitable character in either of the adverse claims. At first it was thought that they could not (see *Sturgess v. Claude*, 1 Dowl. p. 505; *Roach v. Wright*, 8 M. & W. p. 155). However, this rule was doubted in *Putney v. Tring* (5 M. & W. p. 425), and a series of cases before the Judicature Acts (*Rusden v. Pope*, L. R. 3 Ex. p. 269; *Duncan v. Cashin*, L. R. 10 C. P. p. 554; *Engelbach v. Nixon*, L. R. 10 C. P. p. 645; *Bank of Ireland v. Perry*, L. R. 7 Ex. p. 14) decided that in interpleader proceedings Courts of Common Law would entertain equitable rights. Now by the Judicature Act, 1873, § 24, law and equity are administered concurrently by the High Court.

Equitable claims recognised at Common Law, even before Judicature Acts, 1873 and 1875.

2. WHEN A SHERIFF OR OTHER OFFICER OF THE COURT IS ENTITLED TO INTERPLEAD.

The rules dealing with this question are Rule 1 (b) and Rules 2 and 3 of Order LVII.

Order LVII.
rules 1 (b),
2, and 3.

Rule 1. Relief by way of interpleader may be granted—

(b) Where the applicant is a sheriff or other officer charged with the execution of process by, or under the authority, of the High Court, and claim is made to any money, goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

Rule 2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(a) That the applicant claims no interest in the subject-matter in dispute other than for charges or costs; and,

(b) That the applicant does not collude with any of the claimants; and,

(c) That the applicant, except where he is a sheriff or other officer charged with the execution of process, by or under the authority of the High Court, who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under Rule 16 of this order,* is willing to pay or transfer the subject matter into Court, or to dispose of it as the Court or a Judge may direct.

Rule 3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants

* See this rule set out, *post*, at p. 160.

have not a common origin, but are adverse to, and independent of, one another.

1. The sheriff can interplead before any action is brought against him. (*Green v. Brown*, 3 Dowl. p. 337.)

2. It is necessary that the claim, when made to "money, goods, or chattels," should be made to "money, goods, or chattels" *taken or intended to be taken in execution*. They therefore need not have been actually taken in execution; yet, on the other hand, there must exist an intention so to take them.

Thus in *Day v. Carr* (7 Ex. p. 883), Pollock, C. B., said, "The Interpleader Act clearly empowers the sheriff to apply to the Court if he goes with the intention of levying under a *fi. fa.*, and a claim is set up to the goods, and in many cases he may be well justified in coming to the Court before he perils himself by an actual seizure under circumstances which might perhaps subject him not only to an action for the value of the goods, but also for damages for taking them." So, too, in *Lea v. Rossi* (11 Ex. p. 13; 24 L. J. Ex. 280; 1 Jur. N. S. 384), where the sheriff had made several ineffectual attempts to levy on the goods, but had not succeeded in doing so, and took out an interpleader summons *before* seizure, it was held that he was entitled to do so; Parke, B., saying that in such cases probably the jurisdiction (of the Court to allow interpleader) would be very rarely exercised; and Martin, B., saying that cases might arise in which great injus-

Sheriff can interplead before action brought against him.

The claim, if made to money, goods, or chattels, must be to money, goods, or chattels taken, or intended to be taken, in execution.

tice would be done if a Judge would not interfere unless a sheriff had seized.

However, if he has not seized, he must have an *intention of seizing*. Thus, in *Holton v. Guntrip* (6 Dowl. p. 130; 3 M. & W. p. 145; M. & H. p. 324), where the sheriff, upon a claim being made, withdrew without making any seizure, and then applied to the Court for relief under the Act, his application was refused, the Court saying that "if the sheriff withdraw upon a claim being set up, he does not come to the Court intending to take the goods, but exercises his own judgment."

Sheriff
must be in
possession
of the
goods or
their pro-
ceeds when
he applies.

3. If the sheriff has seized the goods, then he must be in possession of either the goods, or their proceeds, at the time of his application to the Court; and it makes no difference whether or not, when he gave up the goods, or paid over their proceeds, he had notice of the adverse claims.

Thus in *Anderson v. Calloway* (1 Dowl. p. 636; 1 C. & M. p. 182), where the sheriff had sold the goods and paid over the proceeds to an execution creditor before he applied for relief, it was held that the Act did not apply to a case where the sheriff had paid over the money to one of the parties.

So in *Braine v. Hunt* (2 Dowl. 391; 2 C. & M. 418), where the sheriff had given up the greater part of the goods seized to the claimant, it was held that he could not interplead. "I think," said Bayley, B., "the sheriff does not act fairly if he gives up part of the goods; in fact, he colludes with the party to

whom he delivers them up.” (See too, to the same effect, *Kirk v. Almond*, 2 L. J. Ex. N. S. 13.) In *Scott v. Lewis* (4 Dowl. 259; 2 C. M. & R. 289; 1 Gale, 204), relief was refused the sheriff, where he had sold the goods and paid over the proceeds to the execution creditor, before he had any notice of any adverse claim. In *Inland v. Bushell* (5 Dowl. 147; 2 H. & W. 118), where the sheriff had handed over the proceeds of the goods seized to the execution creditor, he was not allowed to interplead, even although he offered to pay into Court an equivalent sum to the amount levied. Coleridge, J., said, “If the sheriff brings the amount in question into Court, and then the execution creditor is served with the interpleader rule, he would of course not appear, and then his claim would be barred; but barred as to what? Barred as to the money in Court, and not as to the money already in his hands.” However, in *Anderson v. Calloway* (*supra*), the sheriff was allowed to interplead on bringing the amount of the levy into Court, and it is submitted that the Court would now-a-days follow this latter course, since although it is, as Coleridge, J., says, almost certain practically that the execution creditor would not appear, and so the money be paid over to the other claimant, yet *non constat* that the sheriff may not prefer to get rid of the whole matter, even on these terms.

The only exception to this rule is the exception specially provided by Rule 2 (c), *supra*. That excep-

tion was specially introduced in 1896 to meet the hardship to the sheriff that arose in *Moore v. Hawkins* (43 W. R. 235), where the sheriff having handed over the goods to the claimant on the execution creditor admitting the latter's title, was held to be disentitled to relief, and therefore subject to an action for damages at the suit of the claimant.

If the claimant pay out the sheriff, the sum so paid is "the proceeds of goods taken in execution" within Rule 1 (b), and the sheriff can interplead in respect thereof. (*Smith v. Critchfield*, L. R. 14 Q. B. D. 873, C. A.)

Goods seized need not necessarily be in possession of judgment debtor.

4. The goods need not necessarily be seized in possession of the judgment debtor to entitle the sheriff to interplead.

Nothing is said about the party being in possession of the goods. Accordingly, in *Allen v. Gibbon* (2 Dowl. 292), and in *Ford v. Baynton* (1 Dowl. 357), in both of which cases the goods were seized while in the possession of the claimants themselves, interpleader was allowed. (See too, *Barker v. Dynes*, 1 Dowl. p. 169.)

There must be an actual claim to the goods seized or their proceeds.

5. There must be an actual claim to the goods or their proceeds to entitle the sheriff to interplead.

Thus in *Bentley v. Hook* (2 Dowl. 339; 2 C. & M. 426; 4 Tyr. 229), where the only information in the nature of a claim received by the sheriff was that a fiat in bankruptcy had issued against the judgment debtor, it was held that this was not equivalent to a claim by the assignees of the goods, and, as such,

entitling the sheriff to interplead. So too, in *Tarleton v. Dummelow* (5 Bing. N. C. 110), the Court intimated that notice by the solicitor of a petitioning creditor that a fiat in bankruptcy had been issued against the judgment debtor was not such a claim to the goods as to warrant an application for interpleader. And in *Holmes v. Mentze* (4 Dowl. 300; 5 N. & M. 563; 4 A. & E. 127; 1 H. & W. 608), it was held that a claim by a person as partner of the judgment debtor was not a claim entitling the sheriff to interplead. (See too, *per* Lush, J., in W. N. 1875, 204.)

6. The sheriff cannot interplead if the claim is an obviously good one or an obviously bad one.

Thus in *Bishop v. Hinaman* (2 Dowl. 166), where the mortgagees of property were in possession of it at the time of the sheriff's seizure, and claimed the growing crops, it was held that the sheriff could not interplead, as the mortgagees, having taken possession of the land, had *prima facie* taken possession of the crops. So too, *In re the Sheriff of Oxfordshire* (6 Dowl. 136), where the sheriff applied for relief, in a case where, if he had but looked at the date of the execution of the bill of sale under which the claimant claimed, he would have found that it was executed *subsequently to* the date of the levy, and therefore the claim was plainly untenable, his application was refused.*

* *Allen v. Evans* (3 L. J. Ex. N. S. 53), where the sheriff applied for relief, and it was granted, although the claimant claimed under

In *Isaac v. Spilsbury* (10 Bing. 3; 2 Dowl. 211), where a claim to the goods seized was made by the judgment debtor's wife, who alleged that they were vested in trustees to her separate use, interpleader was refused on the ground that the claim must be of such a nature as may be followed by an action; and that here the wife's claim, if any, was only such as could be recognised in a Court of Equity. However, now the Court would not reject the application merely because the claim was made by a *cestui que trust* and not by a trustee. In *Salmon v. James* (1 Dowl. 369) the sheriff had levied on goods under a *fi. fa.*, and then received notice from several parties that they had subsequently sued out writs against the defendant's goods. On his applying to the Court for relief, it was refused, on the ground that he was sufficiently justified in paying over the proceeds of the levy to the first execution creditor, the notices being in fact a mere struggle for priority of claims. (See too, to the same effect, *Day v. Walduck*, 1 Dowl. 523.)

In *Smith v. Saunders* (37 L. T. 359), where the execution debtor claimed to set off a judgment debt he had recovered against the execution creditor, it was held that this was not a claim entitling the sheriff to relief.

It may be here mentioned, that with respect to claims by landlords, when the claim is for rent, it is

an assignment executed *after* the delivery of the writ of *fi. fa.* to the sheriff, would not, it is submitted, be now followed.

the duty of the sheriff, on ascertaining that the rent is really due, to satisfy the claim : and if, instead of doing so, he applies to the Court for relief under the Act, his application will be refused. (*Clarke v. Lord*, 2 Dowl. 55 ; and *Haythorn v. Bush*, 2 Dowl. 641 ; 2 C. & M. 689.) In *Bateman v. Farnsworth* (29 L. J. Ex. 365), where, the sheriff having seized stock and tenant-right on a farm, the landlord claimed (1) his ordinary rent accrued due ; (2) certain penal or additional rent ; (3) the tenant-right consisting of manure thrown into the soil and seed sown but not yet sprung up, the sheriff's application was refused on the ground that there was no claim, not even in respect of the alleged "tenant-right," to chattels as the property of the claimant, or their proceeds. As to the course which the sheriff should pursue in such a case, Pollock, C. B., said, "He must do as he does in the numerous cases not within the Interpleader Act : take good advice, and do the best he can."

7. The sheriff may interplead, although the claimant claims only a lien and not the absolute property in the goods seized. Thus in *Ford v. Baynton* (1 Dowl. 357), where the claimant claimed a lien on a horse in his possession, seized by the sheriff, for the keep of it and another horse which had been removed, it was held that the sheriff might interplead. "In the commercial world," said Taunton, J., "a lien may be equal to the whole value of the goods."

Inter-
pleader
allowed
though
claimant
only claims
a lien.

And
although
claimant
an infant.

8. The sheriff may interplead, although the claimant is an infant. (*Claridge v. Collins*, 7 Dowl. 698; 3 Jur. 894.) "If there is any difficulty," said Williams, J., "it is one which arises between the litigant parties, but the sheriff at all events is entitled to relief."

Judgment
debtor
claiming *en
autre droit*
may be
claimant.

9. The sheriff may interplead, although the claim made to the goods seized is made by the judgment debtor himself claiming them, not in his own rights but in some one else's right.

This was so decided in *Fenwick v. Laycock* (1 Gale & D. 532; 6 Jur. 641; 2 Q. B. 108), where the judgment debtor claimed the goods as executor of a deceased person in trust for whose legatees he held them; for although the Act expressly refused relief in the case of claims made by the parties against whom the process has issued, yet the judgment debtor *qua-executor and trustee* is not the party, though he is the same person. The same would no doubt be held under Rule 1 (b).

Sheriff
need not
take an
indemnity
from either
party, but
if he does
he cannot
interplead.

10. The sheriff can interplead, although he has not applied for, or has refused, an indemnity from either of the claimants; but if he has accepted an indemnity, he cannot afterwards interplead.

Thus in *Levy v. Champneys* (2 Dowl. 354) the sheriff was allowed to interplead although he had refused an indemnity from the execution creditor. (See too, *Crossley v. Ebers*, 1 H. & W. 216.)

In *Harrison v. Forster* (4 Dowl. 558), not only was the sheriff allowed to interplead, although he

had refused the claimant's indemnity, but he was not even restrained from selling the goods seized. *Per Cur.* The sheriff has a right to sell, if he thinks proper: if he chooses to accept the indemnity of the plaintiff, instead of any other person, we cannot interfere to restrain him.

In *Ostler v. Brown* (4 Dowl. 605; 1 H. & W. 653), where the undersheriff was alleged to be execution creditor, the sheriff's application was refused on the ground that if the sheriff accepted an indemnity, the Court would not relieve him, and that the relations between the sheriff and the undersheriff were such that the former was entitled to call on the latter to indemnify him for anything done wrong by the latter or his officers.

11. The sheriff must have no interest himself in the matter, and he must not collude with either claimant. These two conditions of course are essential to all proceedings in interpleader; but questions have arisen as to how far the sheriff could be said to be interested in the matter, from the position of the undersheriff. Thus in the above-mentioned case of *Ostler v. Brown* the sheriff was refused relief, where it turned out that the undersheriff was the son and partner of the execution creditor, an attorney; and previously, in the case of *Duddin v. Long* (3 Dowl. 137; 1 Sc. 281; 1 B. N. C. 299), where the solicitor for the claimants, assignees of the estate of the judgment debtor, was the partner of the undersheriff, the Court had refused to grant

Sheriff must not collude with either party: he must not have any interest in the matter.

any relief on the ground that there was an intermixing of interest between the sheriff and the assignees.

In *Cox v. Balne* (2 D. & L. 718; 9 Jur. 182; 14 L. J. Q. B. 95), where the undersheriff, who was the attorney of certain creditors of the judgment debtor, informed them that the writ of *fi. fa.* had been placed in his hands, whereby the issue of the fiat of bankruptcy was accelerated and the execution frustrated, the sheriff was refused relief. "The undersheriff," said Williams, J., "had no right to make a communication of which the effect might be to hasten more or less the issuing of the fiat, and he ought to have refrained from giving assistance to either party. Where the execution is pending the undersheriff's mouth ought to be closed."

However, the *mere fact* that the undersheriff is solicitor for the claimant will not disentitle him to relief. Thus in *Holt v. Frost* (3 H. & N. 821; 28 L. J. Ex. 55), where the undersheriff was the claimant's solicitor, and as such caused notices of his claim to be prepared and served on himself, he was, nevertheless, allowed to interplead, the Court thinking they should grant relief in such cases, unless the execution creditor had been prejudiced by the conduct of the undersheriff; and with respect to the cases above referred to, Pollock, C. B., said: "There are some old cases in which greater strictness prevailed, where the sheriff's application was defeated under circumstances in which we should not refuse to assist him at the present day."

12. The sheriff must not be guilty of delay; he must be prompt in making his application. Sheriff must be prompt in making his application.

Thus in *Cook v. Allen* (2 Dowl. 11; 1 C. & M. 542), where the sheriff seized the goods on the 10th of December, received notice of the adverse claim on the 15th of December, and did not apply to the Court till January 31st, his application was refused on the ground that he came too late, although there were, in fact, special reasons which partially accounted for his delay.

So too, in *Devereux v. John* (1 Dowl. 548), where the seizure took place in March and the application for relief in June, it was held that the application was too late.

In *Ridgway v. Fisher* (3 Dowl. 567), where the sheriff received notice of claims to goods seized by him on the 23rd and 26th of January respectively, and he did not apply to the Court for relief till the *Easter Term*, after an action had been commenced against him by one claimant and he had been ruled to return the writ by the execution creditor, it was held that his application was too late, and that he ought to have come in the Hilary Term.

In *Lashman v. Claringbold* (2 H. & W. 87) notice of a claim was given to the sheriff two months after the writ of *feri facias* had been delivered to him; and it was held that as the difficulty he was placed in arose entirely from his own delay, in not making a levy at all when he might have done so, or by

making the levy and keeping the money in his own hands, he was not entitled to any relief.

In *Beale v. Overton* (5 Dowl. 599: 2 M. & W. 534: 1 Jur. 544), where the sheriff received notice of a claim on November 28th (three days after the seizure), and did not apply to the Court till the following Easter Term, it was held that he was too late, and that he ought to have applied within such time in the following term as to have enabled the parties to have shown cause in the term; and (*per Alderson, B.*) the sheriff will not be *safe* in such a case unless he applies within the first four days of the term.

In *Mutton v. Young* (4 C. B. 371: 11 Jur. 414: 16 L. J. C. P. 309) the sheriff seized (*inter alia*) certain bills of exchange and a promissory note on January 16th, which, not being due, he retained. He received notice on February 18th from the assignees of the judgment debtor that they claimed the bills and note, and *after negotiating with the assignees about the matter* he applied for relief on April 29th. It was held that his laches disentitled him to relief, and (*per Wilde, C. J.*) "a sheriff who delays his application, at the request and for the interest of one of the parties, places himself out of the protection of the Act." (See too, *Skipper v. Lane*, 2 Dowl. 784.)

It may here be mentioned that though the sheriff is probably not disentitled from obtaining relief by reason of his having been ruled to return the writ

by the execution creditor, (the words of § 6 of the Act of 1831 were "before or after return of such process,") yet in a case where the execution creditor had obtained an attachment against the sheriff for not returning the writ, the sheriff was only allowed to interplead on condition of his paying the costs of the attachment. (*Alemore v. Adeane*, 3 Dowl. 498.)

13. The sheriff, however, will be entitled to relief, if he can satisfactorily explain his delay, or show special circumstances which have occasioned it.

If guilty of delay, he must explain it satisfactorily.

Thus in *Dixon v. Ensell* (2 Dowl. 621), where several months had elapsed since the claim was made before the sheriff's application, but negotiations had been going on between the parties with a view to an arrangement, it was held that, under these special circumstances, the sheriff was not too late in his application.

In *Barker v. Phipson* (3 Dowl. 590), where the writ had issued on the 23rd of December, and the sheriff did nothing but merely take possession, till he received notice of the claim of the assignees in bankruptcy of the judgment debtor on April 7th in the following year, but he had, *four days* after he took possession of the goods, received notice of an *intended fiat* in bankruptcy, and also notice of acts of bankruptcy, which would have rendered it unsafe for him to sell, it was held that, under these circumstances, the sheriff's application was not too late.

In *Toulmin v. Edwards* (Will. Woll. & Dav. 579), where the sheriff, who ought to have applied within

the first *four days* of Michaelmas Term, did not apply till the seventh day of the Term, but gave as his reason for this that three days before the term began *another* claim had been made, and he delayed his application in order to make inquiries in respect of it, it was held that his application was not too late.

However, terms are now abolished, and applications can be made at chambers, more or less continuously throughout the year, so that the cases dealing with the period of term during which application should be made are only now authorities by way of analogy.

It may here be mentioned that it has been decided that, if the sheriff relies on any special circumstances, as excusing his delay, or for any other purpose, he must make a special affidavit of the facts on which he relies; and if he does not, a supplemental affidavit will not be allowed. (*Cook v. Allen*, 2 Dowl. 11.)

Sheriff
must not
have exer-
cised his
own dis-
cretion in
the matter.

14. The sheriff's application will be refused, if he has already exercised his own discretion in the matter.

Thus in *Crump v. Day* (4 C. B. 760), where the sheriff after proceeding to the premises of the judgment debtor to levy under *fi. fa.* *withdrew when he found the property protected by an order of a commission of bankruptcy*, and subsequently sought to seize the goods, and upon a claim *then* being made to them by a purchaser of them from the official

assignee he applied to interplead, the Court held that by originally withdrawing he had exercised his own discretion, and could not afterwards apply to it for relief. (Cf. too, *Braine v. Hunt*, 2 Dowl. 391; *Holton v. Guntrip*, 6 Dowl. 130.)

It remains to mention that, as in ordinary interpleader the fact of the claim being of an equitable nature is now no bar to the relief being given (see *ante*, p. 29), though in early cases it was thought to be a bar. (*Roach v. Wright*, 3 M. & W. 155.)

With respect to the course adopted, where either the execution creditor or the claimant claim any rights against the sheriff in addition to the mere right to the goods seized, *e.g.* for damages for trespass, &c., see *post*, pp. 113—115, and the cases there cited.

It should be mentioned that the sheriff may, still, as before the Interpleader Acts, apply to the Court to enlarge the time for making his return, and there are cases in which, where he is unable to comply with the conditions entitling him to claim relief by way of interpleader, or where the case is obviously not one for interpleader, his proper course is to apply for enlargement of the time to return the writ. (See *per* Vaughan, J., in *Bentley v. Hook*, 2 Dowl. 339; *per* Parke, B., in *Roach v. Wright*, 8 M. & W. 157; and *per* Wilde, C. J., in *Mutton v. Young*, 4 C. B. 37; *Holmes v. Mentze*, 4 A. & E. 131.)

There are cases, too, in which the Court, although refusing the sheriff's application for interpleader, have yet, in lieu thereof, enlarged the time for him to return the writ. (See *Holmes v. Mentze*, 4 Dowl. 300; *Cox v. Balme*, 2 D. & L. 718; *Isaac v. Spilsbury*, 10 Bing. p. 3.)

Sheriff
never
bound to
interplead.

Lastly, it should be remembered, that a sheriff is never bound to interplead. Thus in *Scarlett v. Hanson* (L. R. 12 Q. B. D. 213, C. A.), where the sheriff, finding the goods covered by a bill of sale, withdrew, it was held that he was fully entitled to do so, and that sect. 13 of the Common Law Procedure Act (re-enacted by sect. 12 of Order LVII.) did not compel him to interplead, so that the execution creditor might have the benefit of the chance of an order for sale being made, under which he might get any surplus proceeds, after satisfaction of the bill of sale holder's debt.

CHAPTER II.

THE PRACTICE IN INTERPLEADER.

HAVING considered what must be the position of a person, whether ordinary stakeholder or sheriff, to entitle him to seek relief by way of Interpleader, it remains to treat of the proper way to go to work in pursuit of that relief.

The practice, whether the proceedings are commenced by an ordinary stakeholder or a sheriff, is substantially the same; the only differences arising from the different positions of the parties and their different relations to the subject-matter. It will be most convenient, therefore, while treating of the two cases separately, yet to include all that is common to both, when considering the practice when the proceedings are instituted by a stakeholder, and then, shortly, and so far as necessary, without travelling over the same ground, to deal with what is distinctive in the proceedings when instituted by a sheriff.

**1. OF THE PRACTICE WHEN THE PROCEEDINGS ARE
INSTITUTED BY A STAKEHOLDER.**

The provisions as to the practice in this case are as follows:—

Order LVII., Rule 4.

**Time for
application.**

Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

**Mode of
application.**

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

**Power to
stay pro-
ceedings.**

6. If the application is made by a defendant in an action, the Court or a judge may stay all further proceedings in the action.

**Procedure
on appear-
ance of
claimants.**

7. If the claimants appear in pursuance of the summons, the Court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute, in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant.

**Summary
decision.**

8. The Court or a judge may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same, in

a summary manner, and on such terms as may be just.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Order XXXIV. shall, as far as applicable, apply thereto.

Courses open when dispute only one of law.

10. If a claimant having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

When claimant may be barred.

11. Except where otherwise provided by statute, the judgment in any action, or on any issue, ordered to be tried or stated in an interpleading proceeding, and the decision of the Court or a judge in a summary way, under Rule 8 of this Order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the Court or judge as the case may be, or of the Court of Appeal.

When judgment is final.

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader

Discovery and mode of trial.

issue; and the Court or judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

One order
in several
matters.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several divisions, or before different judges of the same division, such order may be made by the Court or judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

Costs, &c.

15. The Court or a judge may, in and for the purposes of any interpleader proceedings, make all such orders as to costs, and all other matters, as may be just and reasonable.

C. L. P.
Act, 1860.

The Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126):

Summary
decision
final.

§ 17. The judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Time for
applica-
tion.

The time, then, for the applicant to make his application is after he has received notice of the adverse claims, and either before or after an action has been commenced against him by one or both

of the claimants. He need not, as was necessary before the Rules of 1883, wait until he is being sued by one or both of the claimants.

Under Order I., r. 2, of the Rules of the Supreme Court, 1875, the period during which it was permissible for a defendant to make the application was the interval between his being served with the writ of summons and before the delivery of his statement of defence. No such limit of time is imposed by the present rules, it being open to a defendant by the express words of Rule 4 to apply "at any time after service of the writ of summons." Still, the application ought to be made at the earliest possible moment, for promptitude is always required from those who seek relief by way of interpleader; and if the applicant before applying had allowed an action to proceed very far against him, even if this would not lead to his application being refused, it would probably lead to the application only being granted on the terms of his paying all the costs thrown away by his delay in making it.

The form of the application is by a *summons* at Chambers before the Master. Mode of application.

The application by motion to the Court, which had indeed already fallen into desuetude, is apparently no longer allowable under the Rules of Order LVII.

By virtue of Order LIV., r. 12, a Master now has all the jurisdiction in interpleader which a Judge at Chambers possesses. Jurisdiction of Master:

and of
District
Registrar.

If the application be made in a District Registry, the District Registrar has the same jurisdiction in the matter as the Master. (Order XXXV., r. 5 (f)).

If the applicant is not being sued by either claimant, the summons may be entitled "In the matter of an application by A. B., for leave to interplead."

If an action has been already brought against him, the application should be made in, and entitled in, that action. (See *Reading v. London School Board*, L. R. 16 Q. B. D. 686.)

If more than one action is being brought against him, the applicant should make one application, entitled in all the actions, before the tribunal competent to deal with the matter had there only been one action; and such tribunal may make an order dealing with the matter in all the actions. (Order LVII., r. 14.)

Nature of
summons.

The summons will call upon the plaintiff and claimant, or the claimants, as the case may be, to attend before the Master at the time when the summons is returnable, on the hearing of an application, on the part of the applicant that they should appear and state their claims, &c., and that in the meantime all further proceedings should be stayed (or no further proceedings taken). (See form of summons, *post*, in Appendix C., form 1, p. 170.)

Though no particular form of summons is required, and in *Frost v. Heywood* (2 Dowl. N. S. 801; 21 L. J. Ex. 242) a rule calling on the parties

to appear before the Court, in order that it might exercise its jurisdiction on the adjustment of the several claims, was held sufficient in its terms; yet it is best to adopt the form now in general use, as far as is possible.

The summons must be duly served on the plaintiff and claimant, or claimants if more than one. As to what constitutes sufficient and insufficient service of a rule or summons on a party called upon to appear, see *Lambert v. Townsend* (1 L. J. Ex. N. S. 113), and *Phillips v. Spry* (1 L. J. Ex. N. S. 115).

If one of the claimants be a foreigner residing out of the jurisdiction of the Court, leave may be granted to serve a copy of the summons upon such foreigner abroad; and if, upon such service, the foreigner do not appear, he will be barred from afterwards prosecuting a claim against the applicant in respect of the subject-matter of the application. (*The Credits Gerundese, Limited v. Van Weede*, L. R. 12 Q. B. D. 171.) The service, in such a case, should only be effected in such manner as is prescribed by the law of the domicile of the claimant. (*Van der Kan v. Ashworth and Company*, W. N. 1884, p. 58.)

However, in *In re Busfield* (L. R. 32 Ch. D. 123), Cotton, L. J., dealing with the case of *The Credits Gerundese v. Van Weede*, says: "The decision may perhaps be supported, on the ground that the object of service was not to give jurisdiction over the party served, but only to give him notice of a proceeding affecting his rights, that he might, if he pleased,

Service thereof.

Service on foreigner residing out of the jurisdiction.

come in and defend them, and it is on this that Baron Pollock rests his judgment."

No order will be made against a party not served, or insufficiently served; and before an order will be made against a party not appearing, it must be shown, by an affidavit of service, that he has been duly served. (See form of affidavit of service, *post*, in Appendix C., form 4, p. 172.)

It was held formerly that if any claimant gives notice of his claim subsequently to the obtaining of the rule *nisi*, he can be made a party to the rule, and the rule can be enlarged if necessary. (*Walker v. Kerr*, 12 L. J. Ex. N. S. 204; 7 Jur. 156; *Kirk v. Clark*, 4 Dowl. 363.) In the case of proceedings instituted by summons, on a claim being made pending the return of the summons, the summons would probably be adjourned to enable the new claimant to appear and state his claim, unless there was time to enable him to appear without an adjournment.

The summons must be supported by an affidavit of the applicant himself (if possible), satisfying Rule 2. (See form of affidavit, *post*, Appendix C., form 2, p. 171.)

Proceed-
ings on
summons.

On the return of the summons both the claimants may appear: neither of them may appear: one of them may, and the other may not, appear

When
neither
claimant
nor plain-
tiff appear.

If neither of them appeared, it is submitted that any action against the applicant would be stayed, he obeying the order of the Court as to the disposal of the money or goods in his possession, after deduct-

ing his own expenses therefrom. (Cf. *Eveleigh v. Salisbury*, 3 Bing. N. C. 298; 5 Dowl. 369; a sheriff's case.)

If a plaintiff claimant do not appear, it is submitted that the action against the applicant would be stayed: the applicant would be ordered to give up the goods or money to the other claimant; all this being without prejudice to any rights the plaintiff claimant might afterwards assert against the other claimant. (Cf. *Doble v. Cummins*, 7 Ad. & Ell. p. 580; and *post*, p. 103.)

If a claimant do not appear, he will be barred from ever prosecuting his claim against the applicant, saving nevertheless his right or claim against the other claimant; and as between the claimant appearing and the applicant, the Court will make such order as may be just and reasonable. The course adopted would no doubt, as a rule, be for the property to be given up to the claimant appearing. (See *post*, p. 94, as to applicant's costs, when the other parties do not appear.)

If, however, both parties appear, then they must be prepared to support their claims by affidavit,* shortly stating the grounds of their respective claims. (See form of a claimant's affidavit, *post*, in Appendix

* Perhaps it is not essential that the plaintiff should appear with an affidavit: an execution creditor need not (*Angus v. Wootton*, 3 M. & W. 310), but in his case *res ipsa loquitur*. But the plaintiff had best be provided with evidence of his case. The claimant must (*Powell v. Lock*, 3 Ad. & Ell. 315; 1 H. & W. 381).

C., form 3, p. 171 : a plaintiff's would be very similar.) The affidavit of the applicant, and also of the other parties, should be entitled in the action, if any. (*Pariente v. Pennell*, 7 So. N. R. 834; *Levi v. Coyle*, 2 Dowl. N. S. 932.) These affidavits had better be sworn by the parties themselves: but this is not absolutely necessary if it is impracticable. Thus, in *Webster v. Delafield* (7 C. B. 187; 18 L. J. C. P. 187; 6 D. & L. 597; 13 Jur. 635), it was held by the Court of Common Pleas that an affidavit by the solicitors to the claimant who resided abroad, alleging that from documents in their possession they believed the claimant was entitled to the property, was a sufficient affidavit to entitle the claimant to have the matter settled by an issue.

Upon the hearing of the summons, there are several courses open.

Summary
decision,
when ap-
plicable.

1. *The matter may be disposed of summarily.*

This course may be adopted: (α) in all cases, if both the claimants assent to its being adopted; (β) the cases where one claimant desires it, if, having regard to the value of the subject-matter, it seems a desirable course (Rule 8); (γ) in all cases where the question involved is one of law, and the facts are not in dispute (Rule 9).

A course of practice at Chambers has established that £50 is "the value of the subject-matter" under which a summary decision, at the request of one claimant, may be given. (*Victor v. Cropper*, 3 Times Law Reports, p. 110, C. A.)

Notwithstanding the terms of Rule 11, a summary decision of the Master may (unless, of course, the claimants consent to its being final) be appealed from to the Judge at Chambers, even without special leave from the Master; for it is only the decision of the Court or a Judge that is made final, except by special leave, by Rule 11; and although Order LIV., r. 12, confers upon the Master the jurisdiction of a Judge, in the matter of interpleader, yet that same order, in its 21st rule, provides that any person affected by any order or decision of a Master may appeal therefrom to a Judge at Chambers. (*Webb v. Shaw*, L. R. 16 Q. B. D. 658; *Bryant v. Reading*, L. R. 17 Q. B. D. 128; overruling *Westerman v. Rees*, W. N. 1883, p. 228; *Clench v. Dooley*, 56 L. T. N. S., p. 122.)

The determination to decide summarily is itself part of the summary decision, and is exactly in the same situation, so far as the right of appeal goes, as the summary decision itself. (*Bryant v. Reading*, *ubi supra*.)

Again, notwithstanding the terms of Rule 11, no appeal, even by special leave, lay from the decision of the Divisional Court to the Court of Appeal; for § 17 of the Common Law Procedure Act, 1860, being still in force, the combined effect of it and of § 20* of the Appellate Jurisdiction Act, 1876

* § 20: "Where by Act of Parliament it is provided that the decision of any Court or Judge, the jurisdiction of which Court or Judge is transferred to the High Court of Justice, is to be final,

(39 & 40 Vict. c. 59), is to forbid any such appeal. (*Waterhouse v. Gilbert*, L. R. 15 Q. B. D. 569—C. A.; *Bryant v. Reading*, L. R. 17 Q. B. D. 128—C. A.)

§ 17 of the Common Law Procedure Act also had the effect of preventing an appeal from a summary decision of the Judge at Chambers to the Divisional Court, whether such decision was with the consent of both, or only at the request of one of the claimants, and even though the Judge at Chambers give special leave to appeal. (*Lyon v. Morris*, L. R. 19 Q. B. D. 139—C. A.; *In re Tarn*, (1893) 2 Ch. D. p. 280.)

But a decision by a Judge at Chambers, on his own initiative, when only a point of law is involved, is not within Rule 11 of Order LVII., nor (it should seem) a summary decision within § 17 of the Common Law Procedure Act, 1860. Still, no appeal would, it is submitted, lie therefrom, for no right of appeal, in such a case, is conferred by the Common Law Procedure Act, 1860; and “from the decision of a Judge acting at Chambers under a statute, there would be no right of appeal, unless it was given by the statute.” (*Per Fry, L. J., in Lyon v. Morris, ubi supra.*)

The order on a summary decision, if made by consent, should state the consent on its face; other-

an appeal shall not lie in any such case from the decision of the High Court of Justice or of any Judge thereof to Her Majesty's Court of Appeal.”

wise, it was held in *Harrison v. Wright* (13 M. & W. 816), that it would be bad as an order, though it might be supported as an award between the parties. (See form of order deciding summarily, *post*, in Appendix C., form 9, p. 176.)

Of course, if the summons were referred by the Master to the Judge, or by the Judge to the Court, the Judge, or Court, as the case might be, would have the same power of deciding summarily as the Master had.

2. *The proceedings may be transferred to the County Court, pursuant to § 17 of the Supreme Court of Judicature Act, 1884 (47 & 48 Vict. c. 61).* Transfer
to County
Court.

That section provides as follows :—

“ If it shall appear to the Court or a judge that any proceeding now pending, or hereafter commenced in the High Court of Justice by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of £500 (being the limit of the equitable jurisdiction given to County Courts by the County Courts Act, 1865), may be more conveniently tried and determined in a County Court, the Court or judge may, at any time, order the transfer thereof to any County Court in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question; and every such order shall have the same effect as if it had been for the transfer

of a suit or proceeding under § 8 of the County Courts Act, 1867: and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any County Court rules for the time being in force."

To which
County
Court
transfer-
able.

The particular County Court, or County Courts, to which there is power to transfer the proceedings under this section would seem to be any Court within the district of which the claimants, or either of them, reside or carry on business, for § 10, sub-s. 6, of the County Courts (Equitable Jurisdiction) Act, 1865 (28 & 29 Vict. c. 99), provides that: "Proceedings in any suit or other matter under this Act, which are not otherwise provided for, shall be taken or instituted in the County Court within the district of which the defendants, or any one of them, reside, or resides, or carry on, or carries on, business."

Practice on
transfer.

With respect to the practice upon such transfer to the County Court, the rules of Order XXXIII. of the County Court Rules of 1889 provide as follows:—

Rule 9. Where a proceeding by way of interpleader has been transferred to a County Court under the powers given by § 17 of the Supreme Court of Judicature Act, 1884, the claimant shall lodge with the Registrar the order transferring the proceeding, or a duplicate or copy thereof, under the seal of the High Court of Justice, together with office copies of all affidavits used on the application, to the High Court of Justice, and a copy of the issue, if any,

directed to be delivered between the parties, by any order of the said High Court, and also a statement in writing setting forth the names and addresses of the several parties to such proceeding, and their solicitors, if any, and, concisely, the nature of the proceeding transferred, together with a request to enter the same for hearing. The Registrar shall thereupon enter the proceedings for hearing, and give notice of the day, time, and place for the hearing of the proceedings to the London agent of the under-sheriff, and to the execution creditor, and to the claimant, ten clear days before such day, unless any shorter notice be directed in the order transferring the proceeding.

Rule 9A (a). The claimant in any such proceeding shall, five clear days at least before the day fixed for the hearing of the proceeding, lodge with the Registrar two copies of the particulars of any goods or chattels alleged to be the property of the claimant, and of the grounds of his claim; and the Registrar shall forthwith send by post to the execution creditor or his solicitor one of the copies of such particulars: Provided that by consent of all parties, or without such consent, if the judge shall so direct, the interpleader claim may be tried although this rule has not been complied with.

Claimant to lodge two copies of particulars and grounds of claim,

Rule 9B (b). No claim for damages shall be allowed in any such proceedings.

Damages not to be claimed.

Rule 10A (c). Any proceeding by way of interpleader transferred to a County Court under the

Mode of trial of interplea-

der trans-
ferred from
High
Court.

powers given by the 17th section of the Supreme Court of Judicature Act, 1884, shall be tried in such manner and under such conditions as may be prescribed by the order directing such transfer. In the event of no directions as to the manner and conditions of trial being given in such order, the sheriff, or any of the parties to the proceeding, may apply to the judge or Registrar of the Court to which the proceeding is transferred for directions as to the mode of trial, or as to any proceeding with reference to the property seized, and, subject thereto, the proceeding shall be tried by the judge without a jury, and the ordinary procedure on the trial of an action shall apply.

Costs of in-
terpleader
and Chan-
cery pro-
ceedings
trans-
ferred.

Rule 10B (*d*). Where any proceeding by way of interpleader, or any action or matter pending in the Chancery Division, is ordered to be transferred from the High Court to a County Court, and no order to the contrary has been made in the High Court, the costs of the order and of the proceedings prior thereto shall be in the discretion of the judge of that County Court, and shall be taxed in the County Court upon such scale, whether of the High Court or County Court, as the judge shall think just. The costs in the County Court shall be in the discretion of the judge, and shall be taxed on such County Court scale as he may think just.

Order on
hearing.

Rule 10c (*e*). The order upon the hearing of a proceeding by way of interpleader transferred from the High Court of Justice to a County Court shall be

according to such of the forms provided for orders on the hearing of interpleader proceedings commenced in the County Court as shall be applicable to the case, with such variations as the case may require, and such order shall contain directions as to how any moneys in the hands of the sheriff are to be disposed of, and an order on the sheriff to deal with such moneys accordingly.

Rule 11. Where any proceeding by way of interpleader is transferred from the High Court to a County Court, the judge may order that the sheriff shall have his costs of the interpleader proceeding in the High Court, and may direct by which party the said costs shall be paid. Sheriff's costs.

The order directing the transfer can be appealed against, as, for instance, on the ground that the questions involved are of sufficient importance to warrant their decision by a Judge, or jury, in the High Court. Appeal.

For a form of the particulars of the statement to be delivered by the claimant to the Registrar, under Rule 9 of Order XXXIII., see Appendix C, form 13, p. 179. (Official Form, No. 77, in the Appendix to the County Court Rules of 1889.) Particulars.

The effect of the order of transfer is, it will be observed, the same as if there had been an order for "the transfer of a suit or proceeding under § 8 of the County Courts Act, 1867." That section provides that:

"When any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceed- County Court Act, 1867, § 8.

ing might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at Chambers to the Judge to whose Court the said suit or proceeding shall be attached to have the same transferred to the County Court, or one of the County Courts, in which the same might have been commenced ; and such Judge shall have power, upon such application, or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court."

The proceedings then, after the transfer, are similar to the proceedings, as to mode of trial and otherwise, of an ordinary County Court action. (See *The Annual County Court Practice*, 1898, Part VIII. c. 5.)

Appeal
from judg-
ment in
County
Court.

The right of appeal from the judgment of the County Court Judge is now regulated by the Rules of the Supreme Court of Dec., 1885, Order LIX., rules 9—17. (See these rules, and *The Annual County Court Practice*, 1898, Part VII. c. 2.)

From the decision of the Divisional Court on such appeal, an appeal lies under § 45 of the Judicature Act, 1873, by special leave of the Divisional Court, to the Court of Appeal. (*Thomas v. Kelly*, L. R. 13 A. C. 506.)

The order of the Divisional Court affirming the judgment of the County Court Judge is a final order, and therefore the proper notice of appeal to be given under Rule 3 of Order LVIII. is a fourteen days' notice. (*Hughes v. Little*, L. R. 18 Q. B. D. 32—C. A.)

3. *If the applicant is being sued by either claimant, the other claimant may be made defendant in the action, either in lieu of or in addition to the applicant.* (Rule 7.) Substitution or addition of defendants.

As a matter of fact, this course is very seldom adopted. Where it is adopted the action proceeds just like any other action, after the pleadings have been closed, to trial. On the trial the issue would be the issue disclosed by the pleadings.

The order adding or substituting defendant may be appealed from to the judge, from him to the Court of Appeal, by the party dissatisfied with it.

(See form of order directing substitution of defendants, *post*, in Appendix C., form 7, p. 174.)

In making an order for substituting defendants, there is no power to limit the substituted defendant, to the defences and counterclaims open to the original defendant. (*Gerhard v. Montagu*, 61 L. T. N. S. 564.)

4. *The matter may be referred, just as it is, in toto, from the Master to the Judge at Chambers* (Order LIV., rule 20). Reference of matter to Judge or Court.

From the nature of things, this order could hardly be appealed from. But from the order of the judge

on such reference there would be the usual right of appeal, except in the case of a summary decision, where, by virtue of § 17 of the Common Law Procedure Act, 1860, there could be no appeal from the Judge at Chambers to the Court of Appeal.

Special
case.

5. *A special case may be ordered to be stated where the question is one of law, and the facts are not in dispute.* (Rule 9.)

The order directing a special case may be appealed from like any other order.

With reference to the proceedings on the special case, the provisions of Order XXXIV., which deal with the subject of special cases generally, are by Rule 9 rendered applicable.

The judgment or decision on the special case may therefore be appealed from to the Court of Appeal.

Such appeal, however, must be brought within twenty-one days from the date of the judgment of the Divisional Court, such judgment being: (α) an interlocutory one, as it is only a step towards arriving at the final order to be made at Chambers; (β) in a matter not being an action. (Order LVIII., rule 15.) (Cf. *McAndrew v. Barker*, L. R. 7 Ch. D. 701.)

(See form of order directing special case, *post*, in Appendix C., form 11, p. 177.)

Direction
of issue.

6. *The remaining method of dealing with the matter is by the direction of an issue.*

In considering the different questions relating to

the issue, the cases relating to the issue in interpleader proceedings at the suit of the sheriff, as well as at the suit of an ordinary stakeholder, must be dealt with, the procedure in the two cases being the same, and the decisions in each illustrating equally the practice in both.

This is the ordinary method of dealing with the matter when there is any disputed question of fact upon which the result will depend.

The order directing the issue will direct as to who shall be plaintiff in the issue and who defendant: Form of order directing it. as a rule the plaintiff in the action (if an action has been brought) is made plaintiff in the issue, and the claimant defendant, in ordinary Interpleader; and the claimant plaintiff, and the execution creditor defendant, in sheriff's interpleader.

The order will further direct what shall be the question to be tried between the parties to the issue; where and when the trial shall take place; and what according to the event shall be the disposition as to the payment of costs; or, if it is silent as to this, the question will, after the event, be disposed of by the judge before whom the issue is tried (Rule 13), and if not by him, by the tribunal directing the issue (*Marks v. Ridgway*, 1 Ex. 8). (See *post*, in Appendix C., form 8, a form of order directing issue, p. 175.)

Formerly, before the passing of 8 & 9 Vict. c. 109, the form of the issue was a feigned issue, alleging a pretended wager; by the 19th section of that Act,

however, a new form of issue was provided, which with but little variation is the one in use now (see form of issue, *post*, in Appendix C., form 10, p. 176); for although the effect of the Act was not to render a feigned issue illegal (*Luard v. Butcher*, 15 L. J. N. S. C. P. 187), yet, as a matter of fact, the feigned issue has now fallen out of use.

Unless the order directing the issue states that it is to be tried by a jury, or unless either party subsequently apply for a trial by a jury, pursuant to the provisions of Order XXXVI., the issue will be tried before a judge alone. In this matter, the practice differs from that prevailing before the Rules of 1883, under which it was held that by virtue of the Interpleader Act an interpleader issue could only be tried by a jury (*Hamlyn v. Betteley*, L. R. 6 Q. B. D. 63—C. A.).

Order directing issue appealable from.

The order directing the issue may be appealed from, to the judge, if directed by a Master, and thence to the Court of Appeal; or to the Court of Appeal direct, if the order is originally made by a judge.

Practical directions for preparing issue.

As to the practical directions with respect to the framing of the issue, the following are given in the 13th edition of Archbold's Practice, vol. i., p. 733:—

“Get a copy of the rule or order for an issue and leave it with counsel with instructions to prepare a draft of the issue. When settled leave a copy of it with the opposite solicitor, who will also have it settled by counsel. In general, the rule or order points out the time within which the issue must be delivered and

returned. If not so, it must at all events be delivered and returned in a reasonable time. If the counsel on both sides cannot agree upon the form of the issue, you should get an appointment for a meeting between them; and if they are still unable to agree upon the form of it, then the course is to attend before the judge, and he will decide upon the form of the issue, or refer it to a Master."

All applications relative or incidental to the course of proceedings in the issue should be made to the same tribunal by which the issue was directed. (*Per* Wilde, C. J., in *Hargrave v. Hargrave*, 4 C. B. 650.) Thus, if the plaintiff in the issue fail to deliver it within a reasonable time, when no time is mentioned in the order limiting the period within which it must be delivered, an order may be obtained, or the original order amended, limiting the time for its delivery, and in the event of this order not being complied with, an order may then be obtained for delivering over the subject-matter of litigation to the defendant in the issue, with costs. (*Stanley v. Perry*, 1 H. & W. 669.)

If the order directing the issue becomes useless, it may be discharged. Thus, in *Luckin v. Simpson* (8 Scott, 676), where the effect of an Act of Parliament passed subsequently to the order directing the issue was to render the trial of the issue useless, the Court which had made the order directing the issue made absolute a rule to discharge it, in the events which had happened.

If issue becomes useless, order directing it may be discharged.

Again, if either party have any complaint to make with the frame of the issue, and wish to have it amended, the proper course is to apply to the tribunal which directed it, asking for an amendment of it as required, or for a direction that the issue be framed in accordance with the order (if it be not so framed). (*Shingler v. Holt*, 30 L. J. Ex. 318; 7 H. & N. 65; *Price v. Plummer*, 26 W. R. 45.)

Amend-
ment of
issue by
making
new claim-
ant party
thereto.

If, after the direction of the issue, a new claimant come forward, the issue may be amended by joining him as a party thereto, and this whether the issue has been finally drawn up or not. This course was adopted in *Bird v. Matthews* (46 L. T. 512—C. A.), where, liquidation proceedings having commenced pending the trial of the issue, the trustee in liquidation of the execution debtor was, by amendment of the issue, made a party thereto. "It is admitted," said Brett, L. J., "that before the issue is finally drawn up, parties may be added; that is every-day practice. But it is said, they cannot be afterwards. I know of no such law, and it seems to me to be contrary to the practice. An order for an interpleader issue does not itself decide the right of the parties. It leaves them to be decided. To refuse to make this order would be giving effect to a technicality. The Court ought to be able to inquire whether the goods in question were the goods of the trustee in bankruptcy."

Object of
issue.

The object in view in directing the issue is to inform the conscience of the Court as to who is

entitled to the goods or money in question; consequently the order directing the issue may direct that certain admissions shall be made by either party, in order that the real dispute between the parties may be settled, and that the rightful claimant may not be defeated by the absence of some link in the chain of formal proof. To quote the words of Lord Denman, C. J., in *Woodford v. Bosanquet* (5 Q. B. 321; D. & M. 419): "This is an issue directed by this Court to ascertain certain facts with a view to ulterior proceedings; and there is no reason why it may not for such purpose vary the legal positions and rights of the parties, as in issues directed by the Court of Chancery is constantly done. In such cases nothing is more usual than that a special direction should be given, not to set up partnership or bankruptcy, or that a witness wholly incompetent in point of law should be examined upon the trial."

See, too, *Pooley v. Goodwin* (5 N. & M. 466; 1 H. & W. 567), where one of the parties was ordered to make certain admissions at the trial, and the judgment of Lord Denman, C. J.

Here it will be convenient to advert to the cases bearing upon the proper frame of the issue, and the construction to be put upon the words of the issue. This indeed is an important question, as the evidence admissible at the trial must of course depend upon its relevancy to the issue as framed. It is therefore desirable that the issue, while wide enough to include

Admissions.

Cases on construction of the issue.

When and
by whom
can *jus*
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set up.

the whole of the substantial question as between the parties to it, should yet not be so wide as to allow either party to set up rights which, according to the dispute between them, they have no right to set up ; and as part of this question, the cases as to whether or not either party to the issue can set up a *jus tertii* will be considered.

In *Morewood v. Wilks* (6 C. & P. 144), the question on the issue was expressed to be "whether the said goods and chattels (seized) were the property and goods and chattels of the said plaintiff at the time of their being so seized." This was considered by Tindal, C. J., as equivalent to an allegation that *all* the goods seized were his ; but it would seem from the summing up, that in such a case, if the evidence went to show that *any part* of the goods belonged to the plaintiff, the jury would be directed to find specially. (Cf. remarks of Bramwell, L. J., in *Price v. Plummer*, 39 L. T. N. S. p. 567.)

In *Carne v. Brice* (7 M. & W. 183 ; 8 Dowl. 884 ; 4 Jur. 1115) the form of the question was "whether certain apparel taken in execution under a writ of *fi. fa.* was the property of Richard Morgan or not." The *real* point in dispute between the parties was, whether the defendants, as trustees of R. M.'s wife's property, were entitled to the goods. It was held that the judge at the trial was right in rejecting evidence offered by the defendant at the trial to show that at any rate not Morgan, but his assignees in bankruptcy had the property in the goods. "The

form of the issue," said Parke, B., "ought properly to have been whether the goods were the property of the trustees or not: but in truth that is in effect the question upon this issue": and again, "The trustees had no right to set up the title of the assignees. This issue is only a process employed for informing the conscience of the Court."

In *Chase v. Goble* (2 M. & G. 930; 3 Sc. N. R. 245) the question on the issue was whether goods of a judgment debtor seized under a *fi. fa.* were at the time of seizure the property of the plaintiff (mortgagees thereof). The defendant (the execution creditor) was held entitled to invalidate the plaintiff's title by showing that the deed under which they claimed was an act of bankruptcy. The case was distinguished from *Carne v. Brice* on the ground, among others, that in *that case* the claimants were made defendants, and the execution creditor was plaintiff; but as a rule the execution creditor is made defendant, "because," said Tindal, C. J., "he is in possession."

In *Lott v. Melville* (3 Sc. N. R. 346; 9 Dowl. 882; 3 M. & G. 40; 5 Jur. 436) the question on the issue was whether at the time of the seizure of the goods the plaintiffs (the assignees in bankruptcy) were entitled to the same as against, and free from, the execution (of the execution creditor), or whether the goods and chattels were subject and liable to be so seized and levied under the said writ or not, as against the plaintiffs. It was held that this form of

issue put in issue the bankruptcy of the judgment debtor.

In *Linnet v. Chaffers* (4 Q. B. 762 ; D. & M. 14), where the question on the issue, as between the execution creditor (the plaintiff) and the assignees of a debtor, was stated to be whether "the aforesaid execution was valid as against the said fiat," it was held that the execution creditor was not entitled by the terms of the issue to dispute the bankruptcy. "If the plaintiff," said Denman, C. J., "wished to try the question as to the validity of the Commission, he should have had the issue pointed to it."

In *Green v. Rogers* (2 Car. & K. 148) the question was whether the goods seized were the goods of the plaintiff (the claimant), and the judge held that on this issue the plaintiff could only give evidence to show that they were *her* goods; not evidence to show that they were not the judgment debtor's goods.

In *Rogers v. Kenny* (9 Q. B. 592) the question on the issue was whether the plaintiff in the issue had *any* property in the goods. It was held that proof of a *lien* on the goods entitled him to a verdict on the issue.

In *Belcher v. Patten* (6 C. B. 608 ; 18 L. J. C. P. 69 ; 6 D. & L. 370) the question was whether, at the date of the issuing of a fiat in bankruptcy, the plaintiffs in the issue (the assignees in bankruptcy) were entitled to certain goods as against the defendant in the issue (the execution creditor). It was

held that on this issue the plaintiffs could not set up any prior execution or distress to defeat the execution creditor. "The question is," said Coltman, J., "whether the assignees are at liberty to set up the rights of third persons, with whom they are in no way identified and who do not themselves interfere. No doubt the assignees might set up the rights of a third party, provided they claimed under him, but this is an attempt to set up the title of a mere stranger, which clearly cannot be done."

In *Cummings v. Ince* (11 Q. B. 112; 12 Jur. 331; 17 L. J. Q. B. 105), where the question was whether the plaintiff on a given day was entitled to certain deeds specified, notwithstanding a certain arrangement alleged to have been entered into on a certain day, it was held that the plaintiff need not prove her title to the deeds, the question only being whether *the agreement* prevented her from insisting upon her title.

In *Gadsden v. Barrow* (23 L. J. Ex. 134; 9 Ex. 514) the question on the issue was whether certain goods seized were the property of the plaintiff (the claimant) at the time of the seizure. It was held that the defendant might invalidate the plaintiff's title, he claiming under a bill of sale, by proving that a previous bill of sale of the property had been given to a third party.

In *Edwards v. English* (26 L. J. Q. B. 193; 7 Ell. & Bl. 564) the question on the issue was whether the goods seized were at the time of the

delivery of the writ to the sheriff the goods of the plaintiff (the claimant). The plaintiff claimed the goods under a bill of sale from the judgment debtor, and it was held that the defendant could *not* set up a previous bill of sale by the judgment debtor to a third party, which was void as against execution creditors for want of registration, but good as against holders of subsequent bills of sale. This case was distinguished from *Gadsden v. Barrow* on the ground that in the latter case the bill of sale set up by the execution creditor was valid for all purposes, while the one set up in this case was void for certain purposes.* If this be the *ratio decidendi* of this latter case, it seems that they both admit the right of the execution creditor to set up a *jus tertii* to defeat the claimant's claim; only the *jus* must be a good *jus*.

In *Green v. Stevens* (2 H. & N. 146) the question on the issue was whether the goods seized were the

* See *Richards v. James* (L. R. 2 Q. B. 285), where it was decided that as between two claimants, under bills of sale, to property, if the first bill of sale is avoided as against an execution creditor, owing to want of registration, it is avoided for all purposes, and cannot be set up by the holder to defeat the claim of the holder of the subsequent bill of sale. Now by the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), § 10, sub-sect. 4, bills of sale over the same chattels have priority in the order of the date of their registration. See, too, *Ex parte Payne, In re Cross*, L. R. 11 Ch. Div. 539 (C. A.). See, too, the Bills of Sale Act, 1882.

The commonest form of interpleader issue is that in which the claimant is the holder of a bill of sale of property seized by a sheriff. For the law of Bills of Sale generally, see Weir on Bills of Sale.

property of the plaintiff in the issue (the claimant) as against the execution creditor. It was held that the plaintiff was entitled to succeed in the issue, if she proved that she was lawfully entitled to the possession, even though the goods had only been lent to her. Pollock, C. B., said: "The issue in the present case is not whether the goods were the property of the plaintiff absolutely, but whether they are hers as against the defendant. My impression is that this form of issue has been adopted for the express purpose of enabling any person lawfully entitled to possession to sustain his claim."

In *Richards v. Johnson* (28 L. J. Ex. 322) the question on the issue was whether certain goods seized by the sheriff were at the time of seizure the property of the plaintiff in the issue (the claimant) as against the defendant (the execution creditor). It was held that in this issue the defendant was not estopped from proving that the goods were the goods of the judgment debtor, although the judgment debtor himself as against the plaintiff would have been so estopped. (See, too, *Richards v. Jenkins*, L. R. 17 Q. B. D. 544; 18 Q. B. D. 451—C. A.)

In *Shingler v. Holt* (30 L. J. Ex. 322; 7 H. & N. 65) the question was whether the goods seized were, at the time of delivery of the writ to the sheriff, the goods of the plaintiff in the issue (Sarah Shingler); on the hearing it was agreed that the issue must be treated as if amended by the addition of the words "as against the execution creditor."

The Court refused to set aside a verdict for the plaintiff on the ground that Sarah Shingler was a married woman of the name of Sarah Boddy. The Court said the jury had decided on the issue before them: that the question of law, if any, as to a married woman holding property was not a question for the jury, and that the Judge at Chambers would deal there with the verdict on the issue when it was returned to him.

Lastly, in *Richards v. Jenkins* (L. R. 17 Q. B. D. 544; 18 Q. B. D. 451—C. A.) the question on the issue was "Whether the goods seized were at the time of the execution the goods of the claimant as against the execution creditor." The facts were that the goods had belonged to the claimant, who let them out on hire to the execution debtor; that the claimant became bankrupt, but withheld all information as to the goods from his trustee in bankruptcy, and continued to receive rent in respect thereof from the execution debtor, who was ignorant of the bankruptcy. The goods were seized in the possession of the execution debtor. It was held that upon these facts the execution creditor was entitled to succeed upon the issue. (Cf. *Usher v. Martin*, L. R. 24 Q. B. D. 272.)

True rule,
as to who
should be
plaintiff in
issue, and
as to set-
ting up
jus tertii

The law deducible from these authorities would seem to be, that in sheriff's interpleader, if the execution debtor be in possession of the goods at the time the sheriff seizes, the claimant ought to be the plaintiff in the issue, that the onus of proof rests

upon him of shewing that he has a title to the goods, ^{in sheriff's interpleader.} which justifies his intervention, and that such onus can only be satisfied by proof of actual title in himself. Even if, however, he offer *prima facie* evidence of such title, it will be open to the execution creditor to rebut it, by shewing that the claimant has in fact no title (as by shewing that a third party has a title).

If, however, the claimant be himself in possession of the goods at the time of the seizure, it would seem that then the execution creditor ought to be the plaintiff in the issue, and that he can only succeed thereon on proof that the goods were the goods of the execution debtor. In other words, if the goods are in the possession of the execution debtor, the claimant can only justify his intervention; and, if the goods are in the possession of the claimant, the execution creditor can only justify the right of the sheriff to seize and sell them, by proof, in the first case by the claimant, that the goods are *his* goods, and by proof, by the execution creditor in the second case, that the goods are the goods of the execution debtor.

In *Price v. Plummer* (25 W. R. 45), where, on a sheriff interpleading, the usual order was made directing an issue to try whether the goods were the goods of the claimant or not, and the form of the issue was "whether the goods or any part thereof were the goods of the claimant at the time of seizure," it was held that the defendant in the issue

was entitled to an order directing the claimant to specify the goods claimed by him. Here it is obvious that if the goods not claimed by the claimant should be of sufficient value to satisfy the execution creditor's debt the issue would be a useless expense.

In this same case it appears that the claimant did not comply with the order directing him to specify the goods claimed by him, and on the issue it turned out that the *greater part* of the goods belonged to the claimant, and the residue, not to the judgment debtor, but to third parties. It was held by the Court of Appeal, reversing the decision of the Common Pleas Division (39 L. T. 38, 657 : 26 W. R. 682), that the claimant was entitled to a verdict, and his costs. "I am clearly of opinion," said Bramwell, L. J., "that the form of the issue is of no consequence. It is directed for the purpose of informing the conscience of the Court. The issue is not decided against the claimant if he claims all the goods and it turns out that he is only entitled to some, but it is to be taken distributively, and it means, Are these goods or part of them, and if so what part, the property of the claimant?"

In *Saunders v. Perrin* (22 L. T. N. S. 419), it was held that a mistake on the face of the issue as to the statute under which it was directed was immaterial.

In *Schroeder v. Hanrott* (28 L. T. N. S. 704), it was held that the claimant was entitled to succeed on the issue, as against the execution creditor, although he

was only a *cestui que trust*, and the trustees ought technically to have been parties to the issue.

The provisions of Order XXXI., dealing with discovery and inspection, and of Order XXXVI., dealing with mode and place of trial, apply to the issue. (Rule 13.)

Thus, interrogatories may be delivered on the issue as in an ordinary action. (*White v. Watts*, 31 L. J. C. P. 381; 12 C. B. N. S. 267.)

Interrogatories and other matters antecedent to trial of issue.

As in the ordinary case of issues ordered to be tried, *e.g.*, by the Court of Chancery, the proper tribunal to apply to for a postponement of the trial would be the tribunal directing the issue. (*Kebell v. Philpot*, 9 Sim. 614.)

The issue will be entered for trial, or come on for trial, at the assizes, where it is directed to be tried like any ordinary action.

In case of either party to the issue relinquishing or abandoning his claim before the trial comes on, the successful party must apply for the costs to the tribunal directing the issue: he must apply on an affidavit entitled in the original action. (*Elliot v. Sparrow*, 1 H. & W. 370.)

Where the money the right to which was being tried was in Court to abide the event, and the plaintiff in the issue failed to proceed to try it, on an application to the Court to get the money paid out, the Court would only grant a rule *nisi*. (*Stanley v. Perry*, 1 H. & W. 669.)

It would follow that when the application is made

at Chambers, the party seeking to obtain the fund would call on the party in default by *summons* to appear to shew cause why the fund should not be paid out, and unless some good cause could be shewn, it would then be ordered to be paid over to the applicant.

In *Lydall v. Biddle* (5 Dowl. p. 244), where the plaintiff in the issue failed to proceed to trial, and the defendant wished to get an order at once substituting another claimant, in the place of the defaulting party, the Court would only grant a rule *nisi*, calling on both the party who had failed to proceed to trial and the party whom it was sought to substitute for him.

In *Kimberley v. Hickman* (1 Saunders & C. B. C. 90), where the plaintiff in the issue made default in proceeding to trial, the terms on which the Court allowed him to have the question tried were that he should pay the costs of the day when he failed to appear; but the costs of the application on which the Court made this order were ordered to abide the event.

In *Wicks v. Woods* (26 W. R. 680) the order directing the issue reserved the question of costs. The plaintiff apparently not proceeding to trial with proper despatch, the defendant obtained an order that unless the plaintiff gave notice of trial "by Monday next peremptorily," and proceeded forthwith to enter the case for trial, *the original order should be discharged*. The plaintiff failed to comply with

these conditions, and it was held that the defendant had a right to the costs of the proceedings, in spite of the terms of the order discharging, in the event which had happened, the original order.

If both parties appear at the trial, the proceedings ^{The trial.} thereat resemble the proceedings at the trial of an ordinary action. Thus, in sheriff's interpleader, the plaintiff (*i.e.*, generally the claimant) who has to prove his case and make good his title to the goods seized is entitled to begin at the trial (*Edwards v. Matthews*, 16 L. J. Ex. 291); and if the judge ruled wrongly as to the proper person to begin, this would not be ground for a new trial of itself, unless some manifest injustice was done thereby, and this would be still more the case since the Judicature Act. (See Rules of S. C. 1883, Order XXXIX., rule 6.)

With respect to the reception of evidence at the trial, though it seems that formerly the rules regulating its admissibility were not adhered to with the same strictness as in ordinary trials (see *Pooley v. Goodwin*, 5 N. & M. 466), yet according to Mellor, J., in *Emmott v. Marchant* (L. R. 3 Q. B. D. 556), of late years there has been no difference between the evidence received upon the trial of an interpleader issue and that in other cases. In *Coole v. Braham* (18 L. J. Ex. 105; 3 Ex. 183), where the question between claimant and execution creditor was as to the validity of an assignment under which the claimant claimed the goods of the judgment debtor,

Reception
of evidence
thereat.

which had been seized, it was held that the judge at the trial rightly rejected an alleged admission of the judgment debtor to his brother (the execution creditor not being present), that he owed moneys to the claimant. (See, too, as to the admissibility of evidence, *Smith v. Yorke*, 21 L. J. Q. B. 53.)

In *Gugen v. Sampson* (4 F. & F. 974), where the claimants to the goods seized were the trustees of a post-nuptial settlement made in pursuance of an ante-nuptial agreement, it was held that a certificate of registration of the settlement as a bill of sale was sufficient evidence of a due registration, *i.e.*, of registration with a proper affidavit; and Channell, B., said that such objections should not be made on the trial of interpleader issues. (See, however, *Emmott v. Marchant*, L. R. 3 Q. B. D. 556, as to the correctness of the ruling in this case as to the sufficiency of the evidence of due registration.) In *Gayton v. Espin* (1 F. & F. 722), where the purchaser from the claimant as well as the claimant had been made a plaintiff in the issue, Bramwell, B., refused to allow counsel for the purchaser from the claimant to address the jury. In *Williams v. Grey* (19 L. J. C. P. 382), where a bond was conditioned to be void in the event (among others) "if the claimant should proceed to try the issue," it was held that the fact that when the issue came to be tried the parties agreed to withdraw a juror, and the claimant subsequently neglected to proceed to trial according to a judge's order, was not such as to

entitle the claimant to say that the condition of the bond had been fulfilled. In *Hornidge v. Cooper* (27 L. J. Ex. 314), where the claimant claimed the goods as the purchaser thereof from the sheriff, who, it appeared from the evidence, had seized them before the execution creditor had recovered his judgment, it was held there was sufficient evidence of the sheriff's right to sell the goods to warrant a verdict for the claimant.

In *Blackmore v. Yates* (2 L. R. Ex. 225) the question upon the issue was whether the property in certain rolling stock of a railway company was in the plaintiff as against the defendant (an execution creditor of the Company). The rolling stock had been transferred by the Company to the plaintiff as one of the terms of compromise of an action, commenced by the plaintiff, on behalf of persons beneficially interested in a Lloyd's bond, against the Company. It was held that the judge at the trial was right in rejecting evidence tendered on behalf of the defendant, for the purpose of showing that the Lloyd's bond was *originally* void, on the ground that the original validity of the bond could not be disputed in this issue: the only question being whether the transfer of the rolling stock by the Company to the plaintiff was or was not *ultra vires* and invalid.

The issue, as has been already indicated, may be tried either before a judge alone, or before a judge and jury.

Proceed-
ings sub-
sequent to
trial.

Whichever of these modes be adopted, it may be stated broadly that, as to all subsequent proceedings, the matter may run the gauntlet of all the proceedings that can be taken upon the trial of an action with or without a jury, as the case may be.

This incident of the trial of the issue is in no way interfered with by the provision of Rule 13, which enables the judge at the trial to finally dispose of the whole matter of the interpleader proceedings, for the object of this provision is only to obviate the necessity, when convenience admits of it, of the resort to Chambers, after the determination of the issue. The order or judgment, therefore, of the judge finally disposing of the whole matter at the trial, stands in the same position as the final order or judgment made at Chambers on the relegation of the matter, after the determination of the issue, and is quite distinct from the judgment given as the result of the issue.

From this latter judgment, therefore, if the issue be tried by a judge alone, there is, as in ordinary cases, under § 19 of the Judicature Act, 1873, an appeal to the Court of Appeal. (*Dawson v. Fox*, L. R. 14 Q. B. D. 377—C. A.)

If, however, the issue be tried before a judge and jury, then, in case it is desired to challenge the direction of the judge, or the findings of the jury, or both, the application for a new trial must be made, as in an ordinary action, to the Court of Appeal. (*Robinson v. Tucker*, L. R. 14 Q. B. D.

371—C. A.) If, in addition to challenging the direction, or findings, it is also desired to challenge the judgment of the judge thereon (as distinguished from his judgment finally disposing of the whole interpleader proceedings), the application challenging such judgment will also be to the Court of Appeal. (Supreme Court of Judicature Act, 1890, § 1.)

The fact that after the trial of an issue the judge makes a final order under Rule 13, finally disposing of the whole interpleader proceedings, does not take away the right of the unsuccessful party to appeal on any ground on which he might have challenged the verdict, or judgment on the issue, if no such final order had been made. (*Robinson v. Tucker, ubi supra.*)

The Court of Appeal may, instead of ordering a new trial of an interpleader issue, give judgment thereon, if satisfied that all requisite materials for arriving at a conclusion are before it. (Order XL., rule 10; *Williams v. Mercier*, L. R. 9 Q. B. D. 337—C. A.)

The judgment or order on the issue is an interlocutory one, and also an order made in a matter not being an action. The appeal to the Court of Appeal must therefore be brought within 21 days from the time when such judgment or order is signed, entered, or otherwise perfected. (Order LVIII., rule 15; *McNair v. Audenshaw*, (1891) 2 Q. B. 502—C. A.; cf. *McAndrew v. Barker*, L. R. 7 Ch. App. 701.)

Order
finally dis-
posing of
the whole
matter.

After the determination of the issue, there remains the order finally determining the whole interpleader proceedings. This, as has been already said, may be made by the judge who tries the issue, under Rule 13, or (as is still sometimes the more convenient course) it may be made at Chambers on the matter returning there, after the trial of the issue.

So far as appealing from this order is concerned, it will be enough to say that, by virtue of Rule 11, the right of appeal is the same as that from a summary decision under Rule 8 (as to which see *ante*, pp. 56—58).

This final order would be made on the application (by summons, if at Chambers) of the successful claimant, that the subject-matter of the litigation or the fund in Court be paid over to him, and that he be paid by the unsuccessful claimant the costs of the interpleader proceedings, and of the issue (if this has not been dealt with by the judge at the trial). (*Matthews v. Sims*, 5 Dowl. 234.) The affidavit (if any) on which this application is made should be entitled in the original action, and not in the issue. (*Levi v. Coyle*, 2 Dowl. N. S. 932.)

Pending any appeal which the unsuccessful party is entitled to bring, money in Court would probably not be paid over, or the subject-matter of the litigation handed over, to the so far successful party. (See *King v. Birch*, 7 Q. B. 669; and also the observations of Brett, M. R., in *Robinson v. Tucker*, L. R. 14 Q. B. D. at p. 374.)

With respect to the principles on which either party in interpleader proceedings will be compelled to give security for costs, it was held, in *Benazech v. Bessett* (2 D. & L. 801), that the plaintiff in the issue being a foreigner residing out of the jurisdiction, the defendant in the issue (the adverse claimant) was entitled to have security for costs, the Court saying that the defendant should be in the same position as any other defendant, and that the mischief existed in this case as in any other.

In *Williams v. Crossling* (4 D. & L. 660), where the defendant in the issue (an execution creditor) resided out of the jurisdiction, it was held that the plaintiff in the issue had a right to have security for costs given by the defendant. (See, too, *per Bramwell, L. J.*, in *Attenborough v. St. Katharine's Docks Company*, L. R. 3 C. P. D. 455.)

In *Deller v. Prickett* (20 L. J. Q. B. 151) the defendant, seeking to interplead, was only allowed to do so on giving security for the plaintiff's costs, the defendant he sought to substitute having no other property than that, the dispute as to the title to which occasioned the interpleader proceedings. It may be doubted, however, whether such a restriction, or limitation, would now be put on a defendant's right to interplead.

However, in *Ridgway v. Jones* (29 L. J. Q. B. 97), where, upon the defendant interpleading, an issue was directed between the plaintiff in the action (who was made defendant in the issue) and the bankrupt

(of whose estate the plaintiff in the action was assignee, the bankrupt claiming the monies in dispute as the executor of a third party), who was made plaintiff in the issue, it was held that the defendant in the issue was not entitled to have security for costs from either the defendant interpleading or the plaintiff in the issue.

In *Frost v. Heywood* (2 D. N. S. 801) a banker interpleaded, being sued for monies he held, belonging to a customer, by the assignees in bankruptcy of the customer; a person of whose estate the customer was trustee being the claimant. The Court ordered an action to be brought in the name of the bankrupt against the assignee, the *cestui que trust* to give security for the defendant's costs.

In *Mellin v. Dumont* (17 W. R. 673), where the defendant in the issue (an execution creditor) resided out of the jurisdiction, and had been ordered to give security for costs but had not done so, the Court after the lapse of six months made an order that, unless the defendant in the issue gave security within fourteen days, the money in Court was to be paid out to the plaintiff in the issue.

In *Tomlinson v. The Land and Finance Corporation, Limited* (L. R. 14 Q. B. D. 539—C. A.), a sheriff's interpleader, the defendants in the issue were the execution creditors; they were insolvent and in liquidation. It was held that, in interpleader proceedings, at the instance of a sheriff, both the execution creditor and the claimant are in the

nature of plaintiffs; that either of them can therefore be called upon to give security for costs in any case in which a plaintiff in an ordinary action could be so called upon; and that, therefore, under § 69 of the Companies Act, 1862 (25 & 26 Vict. c. 89), the defendants must give such security.

"The question," said Lindley, L. J., in *Rhodes v. Dawson* (L. R. 16 Q. B. D. at p. 553), "whether a party to an interpleader issue is to be treated as a plaintiff or as a defendant, must be decided by the real merits of the case, and not by the mere form of the issue itself. It may be that in some cases each party is as much plaintiff as the other."

Thus, the mere fact that a person is plaintiff in the issue does not necessarily entitle the defendant to call upon him to give security for costs, if he resides out of the jurisdiction, any more than, on the other hand, does the mere fact that a person is defendant in the issue relieve such person from giving security, if his position is that of a plaintiff.

Thus, in *Belmonte v. Aynard* (L. R. 4 C. P. D. 221, and C. A. 352), where the plaintiff in the issue, who resided abroad, was really rather in the position of the party sued than the party suing, but had been made plaintiff in the issue solely for the convenience of the proceedings, while the defendant in the issue was practically the plaintiff, it was held that the plaintiff in the issue could not be called upon to give security for costs. Denman, J., said, "I think the principle upon which security for costs is ordered

is clearly this, viz., that one who is substantially in the position of plaintiff initiating an action, and is a foreigner residing abroad, shall be bound to give security for costs."

Costs.

As to costs, Rule 15 provides that the Court or a judge may, in and for the purpose of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

The words "all other matters" has been held to include the charges of a wharfinger interpleading. (*De Rothschild v. Morrison*, L. R. 24 Q. B. D. 750.)

Inasmuch as the object, even before the Rules of 1883, was always to make such orders as were just and reasonable, the practice adopted, and cases decided, as to costs under the Interpleader Act, will still be a good guide in determining what order should, ordinarily, be made as to costs.

Remembering, then, that there are the costs of at least three parties to be dealt with, viz., those of the applicant and of the claimants, the first general rule is, that if the applicant *bonâ fide* applies for relief, and his position is that of an innocent stakeholder, he will get his costs: and these will be a first charge upon the fund or subject-matter in dispute; the sum by which the fund is diminished by the amount of these costs being ultimately made up by the unsuccessful to the successful disputant. This rule was laid down in the case of *Duear v. McIntosh* (2 Dowl. 734), and has always been followed. See *Cotter v. Bank of England* (2 Dowl. 728); *Parker*

v. *Linnett* (2 Dowl. 564); *Attenborough v. St. Katharine's Docks Company* (L. R. 3 C. P. D. 450); and *Searle v. Matthews* (W. N. 1883, p. 176).

However, if all parties are before the Court, it can order the unsuccessful party to pay the applicant's costs *directly*, and then the subject-matter of litigation can be given up to the successful party, discharged from any lien upon it for the applicant's costs. (*Reeves v. Barraud*, 7 Scott, 281.)

The applicant is none the less entitled to this charge upon the fund, because the unsuccessful disputant being insolvent, the successful one will, in all probability, be unable to reimburse himself for the diminution of the fund from the insolvent (*Pitchers v. Edney*, 4 B. N. C. 721); and it is submitted that in such a case, if the fund were insufficient, the applicant would be entitled to get the amount by which it was deficient from the successful party. However, if the applicant has been offered an indemnity from either claimant, and he has refused it, he will not get his costs of interpleader proceedings afterwards instituted by him. (*Gladstone v. White*, 1 Hodges, 386.) See, too, *Jones v. Regan* (9 Dowl. 580), where as the defendant, who was sued by both claimants, had refused an indemnity, he was held to be not entitled to any costs, save those in the *action* brought by the unsuccessful party.

It need hardly be mentioned that the unsuccessful disputant has to bear not only the applicant's costs but the successful party's, as well as his own. This

is so whether the latter succeeds in the issue, or otherwise, as by his opponent abandoning his claim (*Cusel v. Pariente*, 7 M. & G. 527), and in whatever character that opponent appears. (*Melville v. Smark*, 3 M. & G. 57.)

So far it has been assumed that all the parties appear. It may, however, happen that neither of the claimants, or only one of them, appears.

If neither claimant appeared, the proper order would seem to be that any action against the applicant be stayed, he paying into Court the fund, or holding it subject to the order of the Court, after deduction thereout of his own costs of interpleading.

If a claimant plaintiff did not appear, the proper order would seem to be that the action against the applicant be stayed, the fund or property handed over to the claimant, after deduction thereout of the applicant's costs of interpleading (not of the action), the claimant to be at liberty to apply that the plaintiff claimant do pay to him the amount by which the fund has been diminished, owing to the applicant's deduction therefrom for his costs.

In the event of a claimant not appearing, the rule was that the defendant and the plaintiff do each pay their own costs, and the fund, or subject-matter in dispute, be handed over to the plaintiff: *Lambert v. Cooper* (5 Dowl. 547); *Murdoch v. Taylor* (8 Scott, 604; 6 B. N. C. 293). This rule certainly does seem to involve the illogical result that it depends on the act of a third party (his own conduct being

the same) whether the applicant gets his costs or not, and would perhaps not now be deemed just or reasonable.

It seems, too, that in this latter case the defendant would have to pay the costs of the action against him, so far as it had proceeded. (*Murdoch v. Taylor*, and *Lambert v. Cooper*, *ubi supra*; cf. too, *Hansen v. Maddox*, L. R. 12 Q. B. D. 100.)

As to what constitutes an appearance of such a nature as to subject a party to liability for costs, see *Glazebrook v. Pickford* (2 D. N. S. 248; 10 M. & W. 279), where it was held that appearance merely for the purpose of objecting to irregularity of procedure, and not for the purpose of litigating claims, was *not* an appearance attended with these consequences. See, too, *Rooda v. Gun and Shot, &c. Company* (28 L. T. N. S. 635, Q. B.), where the claimant was held to have appeared sufficiently to warrant his being ordered to pay the costs.

Upon the trial of the issue, it may happen that the parties are both partially successful and partially unsuccessful, and the principle adopted in these cases is to apportion the costs of the two parties, according to the amounts in respect of which each succeeded. This principle seems to have been first adopted in the case of *Dixon v. Yates* (5 B. & A. 313; 39 R. R. 489; see the form of final order in this case, at p. 347).

Apportionment of costs, when both parties partially succeed.

If necessary, too, the Courts will, for the purpose of adjusting the costs justly, order the issues to be

distributed. (*Staley v. Bedwell*, 10 Ad. & Ell. 145.) In *Carr v. Edwards* (8 Dowl. 29), where the fund in dispute was £182, of which the plaintiff only recovered £50, it was held that the Judge at Chambers had exercised a wise discretion in ordering each side to pay its own costs. And it seems that in these cases, where neither party is wholly successful, but both are partially so, *there will not, as a rule, be any general costs of the cause given.* For this, the authorities are *Lewis v. Holding* (2 M. & G. 875); on this point overruling *Staley v. Bedwell*; and *Clifton v. Davis* (25 L. J. Q. B. 344; 6 Ell. & Bl. 392).

In the case of *Lewis v. Holding*, where the sheriff seized five horses, and on the trial of the issue it was found that two of them belonged to the claimant, Tindal, C. J., says: "I cannot consider this case as in the nature of an action of trover, in which, by the strict rule of law founded upon the Statute of Gloucester, the plaintiff is entitled as of right to the costs of the cause, if he succeeds as to any part of it. I cannot think that costs under the Interpleader Act were meant to be subjected to so rigorous a rule. I think that a reasonable and equitable course will be upon the finding of the jury in this case to direct that the Master should look at the bill of costs on both sides, and see how much was incurred by the claimant in making out his claim as to the two horses, and how much by the execution creditor in making out his defence as to the three, and that he

should balance one set of costs against the other, and for this purpose look at the briefs and ascertain how much of the briefs and witnesses and other expenses relate to the two horses, and how much to the three. That seems to be the just and proper course to be adopted with respect to the costs of the issue."

In this last case, the claimant was allowed his costs of the interpleader proceedings prior to the direction of the issue, because the events proved that it was right and necessary for him to appear; but no costs subsequent to the trial were allowed him, because the claimant by claiming more than he ought, forced the execution creditor to resist his claim. (See the form of the order in this case at p. 885 of the report.)

This same rule was followed in *Clifton v. Davis* (also a sheriff's case), Crompton, J., saying, "The principle regulating the taxation of costs does not apply. This case is to be treated as if there were no general costs of the cause, and as if neither party were victorious. Each is successful *pro tanto*."

If after the conclusion of the proceedings on the issue, an application for the purpose of getting the fund out of the Court, or for any other purpose rendered necessary by the order directing the issue, is made, the successful party will get the costs of this application also. (*Meredith v. Rogers*, 7 Dowl. 596; *Barnes v. Bank of England*, 7 Dowl. 319.) If, however, it should so be, that there is no occasion to

apply for any purpose, save to get costs, and there has been no direction originally that the parties should apply after the issue in the matter of costs, then if the unsuccessful party has not been asked to pay the costs, it has been held that he will not have to pay the successful party's costs of the application. (*Bowen v. Bramidge*, 2 Dowl. 213.)

Costs dealt
with at
termina-
tion of pro-
ceedings.

As a general rule the costs in interpleader are not dealt with until the termination of the whole matter, and are not determined on interlocutory proceedings. (*Hood v. Bradbury*, 6 M. & G. 981.)

A Master has no jurisdiction under r. 15 to deal with any other costs than those of the interpleader proceedings before him. Order LIV., r. 12 (1), prevents his dealing with the costs of any action commenced against the applicant. (*Hansen v. Maddox*, L. R. 12 Q. B. D. 100.) It is not just or reasonable that a plaintiff should pay the applicant's costs of the action, except in the case of the plaintiff failing in the interpleader. (*Hansen v. Maddox*, *ubi supra*.)

By virtue of § 49 of the Judicature Act, 1873, there is no appeal from an order in interpleader proceedings as to costs only. (Cf. *Hartmont v. Foster*, L. R. 8 Q. B. D. 82, C. A. *Field v. Rivington*, 5 Times Reports 642, C. A.)

PRACTICE IN SHERIFF'S INTERPLEADER.

Order
LVII.

The practice is regulated by rules 5—18 of Order LVII., and § 17 of the Common Law Pro-

cedure Act, 1860. These are all set out on pp. 48—50, with the exception of rules 12, 16, 16A, and 17 of Order LVII., which are as follows :—

Rule 12. "When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled under a bill of sale, or otherwise, to the goods or chattels by way of security for debt, the court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just."

Power to order sale of goods seized in execution.

Rule 16. "Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court it shall be in writing, and upon the receipt of the claim, the sheriff or his officer shall forthwith give notice thereof to the execution creditor according to Form 28 in Appendix B., or to the like effect, and the execution creditor shall within four days after receiving the notice, give notice to the sheriff or his officer that he admits or disputes the claim according to Form 29 in Appendix B. or to the like effect. If the execution creditor admits the title of the claimant and gives notice as directed by this rule, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim."

Sheriff's costs.

Rule 16A. "When the execution creditor has given notice to the sheriff or his officer that he admits the claim of the claimant, the sheriff may thereupon

Withdrawal by sheriff.

withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the judge or master may make any such order as may be just and reasonable in respect of the same: Provided always that the claimant shall receive notice of such intended application, and if he desires it may attend the hearing of the same, and if he attend, the judge or Master may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable."

Costs in
inter-
pleader.

Rule 17. "Where the execution creditor does not in due time, as directed by the last preceding rule, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the judge or master may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges and expenses as may be just and reasonable."

The effect of the sheriff taking out an interpleader summons is to debar the judgment creditor from

issuing execution up to the value of the goods already seized, and therefore from issuing a bankruptcy notice on the debtor under § 4, sub-sect. 1 (g) of the Bankruptcy Act, 1883. (*In re Follows*, (1895) 2 Q. B. 521.)

A solicitor has no authority, apart from special instructions from his client, in engaging in interpleader proceedings. (*James v. Ricknell*, L. R. 20 Q. B. D. 164.) "As a reasonable man," says Wills, J., "he (the judgment creditor) may well decide to give way, and to refuse to stake the cost and anxiety of a second litigation against the chance of success."

The sheriff then, on receiving written notice of the claimant's claim, must at once give the prescribed notice thereof to the execution creditor (see Form 16, in Appendix D. at p. 190). On receipt of this notice, the execution creditor has four days to notify to the sheriff his decision on the question whether he admits or disputes the claimant's claim. If he admits the claim his duty is to give notice thereof to the sheriff in the prescribed mode (see Form 17, in Appendix D. at p. 190), in which case the execution creditor's liability is limited as specified in rule 16, and the sheriff can be protected by an order as specified in rule 16a.

If, however, the execution creditor fails to admit the claimant's title, and the latter persists in his assertion of title, then the sheriff should proceed to interplead as specified in rule 17.

Applica-
tion by
summons
at Cham-
bers.

The application as in stakeholder's interpleader, is by a summons at Chambers, before the Master, taken out in the action in which the execution creditor is plaintiff, and it calls upon the execution creditor and the claimant or claimants to attend upon the hearing of an application of the sheriff that they do appear and state the nature and particulars of their respective claims, &c., &c. (See form of summons, *post*, in Appendix D., form 1, p. 180.)

Service of
summons.

This summons must be duly served on the parties called upon to appear, or else no order can be made against them. In *Lambert v. Townsend* (1 L. J. Ex. N. S. 113), it was held that service of the rule on the claimant's wife and two attempts at service on himself were insufficient; and in *Phillips v. Spry* (1 L. J. Ex. N. S. 115), it was held that a service of the rule on the agent of the execution creditor's attorney was a good service.

On the return of the summons the sheriff *may*, but should not, save for special reasons, support his application by an affidavit stating that he has seized the goods, and has received notice of the adverse claim. (See form of affidavit, *post*, in Appendix D., form 2, p. 181.)

He need not deny collusion in this affidavit. (*Dobbins v. Green*, 2 Dowl. 509.)

If he has been guilty of any delay in his application, he must explain this in his affidavit, in the first instance, for the Court has held that a supple-

mental affidavit explaining the delay will not be allowed. (*Cook v. Allen*, 2 Dowl. 11.)

On the hearing of the summons, neither execution creditor nor claimant may appear; either one may appear, and not the other; both may appear. Hearing of
summons.

In the event of neither of them appearing, an order may be made to sell so much of the goods as will satisfy the sheriff's poundage and expenses, and that thereupon the rest of the goods be abandoned. (*Eveleigh v. Salisbury*, 3 B. N. C. 298: 5 Dowl. 369.)

If the execution creditor appear, but the claimant do not, the latter is barred as against the sheriff. (*Perkins v. Burton*, 2 Dowl. 108: 3 Tyr. 51; *Bowlden v. Smith*, 1 Dowl. 417.) If the execution creditor do not appear and the claimant does, the Court will make an order that the sheriff should withdraw from possession, and that no proceedings should be taken against him by the execution creditor "in respect of the seizure of the goods now claimed." See *Doble v. Cummins*, 7 Ad. & Ell. 580; and *Donninger v. Hinzman* (2 Dowl. 424).

If the execution creditor do not appear, the executions being void, but the claimants, if more than one, do, then the question will be settled between the two claimants who have appeared. (*Gethin v. Wilks*, 2 Dowl. 189.)

If the execution creditor finds that there are no goods liable to his execution, or determines to relinquish his right, his proper course is to notify

this determination to the sheriff, and not to appear at all. If such being his position, he yet does appear, he will have to pay his own costs. (*Glasier v. Cooke*, 5 N. & M. 680 : cf. *C. v. D.*, W. N. 1883, p. 207.)

If, however, both parties appear, then although it is not necessary that the execution creditor should support his case with an affidavit (*Angus v. Wootton*, 3 M. & W. 310), as indeed his position is plain enough, yet the claimant must be prepared with one (*Powell v. Lock*, 3 Ad. & Ell. 315), which need not necessarily be his own. (*Webster v. Delafield*, 18 L. J. C. P. 187.)

The claimant's affidavit should give full particulars as to the *whole* of the claimant's claim, as *e.g.*, if he claim the property seized as security, *all* the monies which he alleges are secured thereon; otherwise he runs the risk of an order confining his right to only so much of his debt as he has given particulars of. (*Hockey v. Evans*, L. R. 18 Q. B. D. 390, C. A.)

No one can be heard upon the summons, unless he has been called upon to appear, although he be in fact a claimant; and if certain persons have been called upon to appear in one character, they cannot appear in another.

Thus, in *Clarke v. Lord* (2 Dowl. 55), a mortgagee appeared as a claimant, on the hearing of a rule obtained by a sheriff, without having been called on. It was held that he could not be heard; and it

was also held that assignees under a fiat in bankruptcy who *had* been called on, need not and should not have appeared if the bankruptcy is put an end to before the hearing of the rule.

However, in *Ibbitson v. Chandler* (9 Dowl. 250), where the sheriff's rule called upon the provisional assignee to appear, and the assignees who had subsequently been appointed, appeared, it was held that they were entitled to be heard.

When the practice was to apply to the Court for a rule, the defendant in ordinary interpleader (*Walker v. Kerr*, 12 L. J. Ex. N. S. 204), and the sheriff in sheriff's interpleader, had the power on a new claimant appearing to make him a party to the rule, and get the rule enlarged for this purpose. In applications at Chambers by summons, an adjournment of the summons if necessary, to enable the new claimant to appear prepared, should probably be obtained.

As to the different courses open to the Master to take, it must be remembered that one course always open is, while refusing the application of the sheriff, to give him time to return the writ of *fi. fa.*; in fact to leave him to perform the duty cast upon him by the law in the best manner he can. (*Rex v. Sheriff of Hertfordshire*, 5 Dowl. 144: 2 H. & W. 122, S. C.)

The order in this case, not being a final one, could, it is submitted, be appealed against by the sheriff, or either of the other parties.

New
claimant.

Enlarge-
ment of
time to re-
turn writ.

Summary
determi-
nation.

As to a summary determination of the matter, it may be effected under exactly the same circumstances, and upon the same grounds, as in the case of ordinary interpleader, both in respect of the circumstances, when the consent of both parties, or of one, or of neither is required, and in all other respects. (See *ante*, pp. 56—59.)

As to appeal, too, the summary determination stands in the same situation as in stakeholder's interpleader.

Sheriff
may ap-
peal from
summary
decision.

The summary decision may, however, be appealed against by the sheriff, as he is neither a party within the meaning of § 17 of the Common Law Procedure Act, 1860, nor "a claimant" within the meaning of Rule 11 of Order LVII. (*Smith v. Darlow*, L. R. 26 Ch. D. 605, C. A.)

Determi-
nation of
matter
under
Rule 12.

Another *quasi* summary method of dealing with the matter is afforded by means of the provisions of Rule 12, which enables the Court or Judge (and therefore the Master or District Registrar), when the claimant claims the goods under a bill of sale, or otherwise by way of security for a debt, to order a sale of the whole or part of the goods, and to direct the application of the proceeds as the Court or Judge thinks fit. (For a form of order in this case see Appendix D., form 13, p. 188.)

With respect to this course of proceeding, it has been well remarked* "that this provision is an

* Archibald's Forms of Summonses and Orders.

exceedingly beneficial one, and that if the judgment creditor cannot question the claimant's title, or where he claims under a bill of sale, cannot show that the bill of sale is defective or satisfied, he had better consent to this order, because a bill of sale by way of mortgage may entitle the claimant to succeed upon an issue, under the ordinary orders, subjecting the judgment creditor to the payment of costs without any means of realizing the equity of redemption, excepting by bankruptcy; whereas under this order he will get the balance, if any, after the claimant is satisfied. Where the judgment creditor cannot dispute the claim, but thinks the goods may realize enough for both claims, his best course is to obtain an adjournment, and get the sheriff to value the goods."

However, it was said by Bramwell, B., in *Pearce v. Watkins* (2 F. & F. 377), that the sale under this section would only be ordered under special circumstances; and in that case, which was an application by the execution creditor to sell, he refused it, saying that he did not see why the claimant should not "nurse his security" if he wished. "There are," says Lindley, M. R., in *Stern v. Tegner*, (1898) 1 Q. B. 37, "three cases which arise in practice. First of all, the case where the security is ample, and where the bill of sale holder tries to assert his rights so as to defeat the execution creditor. That is the common case which § 13 of the Common Law Procedure Act, 1860, was intended to rectify. The bill of sale holder

cannot stand upon his rights when it is plain that he is defeating the execution creditor, which, of course, involves the assumption that after paying off the bill of sale, there will be something left. That is a plain case; in such a case a sale will be ordered. The next case is where the security is plainly deficient. There, if there were a sale, there would not be a surplus, whence it follows that the only proper course is to direct the sheriff to withdraw. What has the execution creditor to do with the goods if he cannot possibly get anything out of them? That is another plain case. The third case is somewhat more difficult. When it is doubtful whether the security is sufficient to pay off the secured creditor or not, what is the right course to take? The proper course in such a case is for the Court to say 'unless the execution creditor will guarantee the secured creditor against loss of sale, we will not order the sale.' " Accordingly, in that case, where, upon the evidence of value, it was doubtful whether there would be enough to pay the bill of sale holder, and the execution creditor refused to give an indemnity, the Court refused to order a sale, and ordered the sheriff to withdraw.

Under this rule the Court has power in ordering a sale, to put the execution creditor in a better position as against the holder of the security, than the position held by the giver of the security (the execution debtor) (*Forster v. Clowser*, (1897) 2 Q. B. 362); its powers apparently being untrammelled by the rules

either of law or of equity, and limited only by what is "just."*

Neither this rule, nor § 13 of the Common Law Procedure Act, of which it is substantially a re-enactment, has the effect of *compelling* a sheriff to interplead when a claimant claims the goods as security for a debt. He may still, as before, withdraw, and return *nulla bona*, if satisfied of the validity of the claimant's title. (*Scarlett v. Hanson*, L. R. 12 Q. B. D. 213, C. A.)

If a sale be ordered under this section, the proceeds to be applied primarily in paying off the claimant's claim, the claimant is only entitled to be paid such sum, as on the hearing of the summons on which the order was made, he has by affidavit or otherwise given evidence that he claimed. (*Hockey v. Evans*, L. R. 18 Q. B. D. 390, C. A.)

* The case of *Forster v. Clowser* must not be misunderstood. It turned upon the exercise of discretion as to what was "just" in the particular case, and did not lay down any absolute rule of law. Where, therefore, in a subsequent case of *Beall v. McNally*, in which the author was engaged, the Master, under a similar state of circumstances (*e.g.*, seizure, under an execution of goods covered by a bill of sale recently granted, under which the principal moneys and interest were only repayable by instalments over a long period) held that he was bound by *Forster v. Clowser* to limit the claimant to interest up to date, the judge in Chambers (Mr. Justice Bucknill) on appeal reversed his decision and held that, *prima facie*, it was not "just" to interfere with the contractual rights of mortgagor and mortgagee, in any other respect, than by ordering a sale under the rule. He gave leave to appeal, but no appeal was brought.

If neither of the above-mentioned courses is adopted, there remain still three courses open, viz. :—

(1.) The direction of an issue, or an action between the claimant and the execution creditor.

(2.) The statement of a special case.

(3.) A reference of the matter from the Master to the Judge at Chambers.

As to (3) nothing more need be said save that it is a course only to be adopted if the Master thinks it a fit course to take owing to special difficulties in the matter.

Interim
disposition
of subject-
matter of
litigation.

As both the issue or special case will necessitate considerable delay, the courses that may be adopted as to the interim disposition of the subject-matter of litigation should be here considered. The goods may at the time of the sheriff's application be either sold or unsold.

If unsold the usual course is to require the value of them, or the amount for which execution is being levied, to be paid by the claimant into Court, or security to be given by him to the satisfaction of the Master for payment of the amount, or in default thereof, that the goods be sold, and the proceeds, deducting the expenses of sale and possession money from the date of the order, be paid into Court to abide the event.

Or an order may be made (but this is not so usual) that the sheriff do sell the goods, and pay the proceeds after deducting the expenses of sale into Court.

Or an order may be made that the sheriff do withdraw from possession upon payment of the amount of the execution into Court by the claimant, or upon his giving security for the same; that in the meantime the sheriff do continue in possession, and the claimant pay possession money, unless he desires the sheriff to sell, in which case the sheriff is to sell and pay the money into Court after deducting expenses of sale and possession money. (See different forms of orders, *post*, in Appendix D, forms 8, 9, and 10, pp. 183—186.)

If the claimant pay money into Court to procure the withdrawal of the sheriff and prevent the sale of the goods pending determination of an issue, he will, nevertheless, have to pay money into Court again to prevent a sale, if another execution creditor seizes the goods, and another issue is ordered. (*Kotchie v. The Golden Sovereigns*, (1898) 2 Q. B. 164, C. A.)

If the sheriff be directed to hold money to "abide the order of the judge of the County Court" to which the interpleader proceedings are transferred, the sheriff is not bound to part with the money (whether the interpleader proceedings be prosecuted or abandoned), except pursuant to an order of such judge. (*Discount Banking Co. v. Lambarde*, (1893) 2 Q. B. 329.)

With respect to the provision that the sheriff do withdraw from possession "upon the claimant giving security for a certain amount to the satisfaction of the Master," it was held in *Darby v. Waterlow* (L. R.

3 C. P. 453 ; 37 L. J. C. P. 203), that, as between the sheriff and the execution creditor the sheriff was justified in withdrawing on receiving information from the claimant that security had been given, pursuant to the order ; this indeed was the fact, although the claimant had obtained the Master's satisfaction, by untruly saying that the sureties were approved by the execution creditor, and although the bond was, when tendered to the Master, unstamped.

If the sheriff has already sold the goods, he will be directed to pay the whole amount into Court, suspending his claim to poundage, his right to which will depend upon whether the execution creditor succeeds or not. (*Barker v. Dynes*, 1 Dowl. 169.)

Receiver
may be
appointed
in lieu of
a sale.

Instead of ordering a sale by the sheriff, there is jurisdiction under § 25, sub-sect. 8, of the Judicature Act, 1873, to order that a receiver be appointed of the subject-matter in dispute, and this will be done in a proper case.

Thus in *Howell v. Dawson* (L. R. 13 Q. B. D. 67), where the property seized consisted of four cabs, six horses, harness, &c., used in the business of a cab proprietor, a going concern and remunerative, an order was made that a receiver and manager thereof should be appointed at the claimant's expense ; that if the claimant succeeded on the interpleader issue, the execution creditor should pay the expenses of such receiver and manager ; that the receiver and manager should give security ; and that

no action should be brought against the sheriff, and no action against him with regard to his handing over to the receiver the goods seized.

If the claimant be in possession of the goods seized as a receiver acting under the order of the Court, in lieu of ordering him to pay the value thereof into Court, an order will be made that he hold the goods, and keep them subject to the further order of the Court; for this course will fully protect the execution creditor's interests. (*Purkiss v. Holland*, 31 Sol. J. 702.)

This will be a proper place to refer to the course pursued with respect to the staying, or allowing actions to be brought independently of the interpleader proceedings. And it may be stated broadly that unless there is really a clear and distinct cause of action, such actions are looked on with great disfavour by the Courts.

With respect to actions against the sheriff by the claimant, as a general rule the order directing the issue, or otherwise disposing of the matter, provides that no action shall be brought against the sheriff (*Carpenter v. Pearce*, 27 L. J. Ex. 143); and if it does so provide, of course none can be brought, and any action pending will be restrained (*Winter v. Bartholomew*, 25 L. J. Ex. 62), the rule being that if the sheriff has acted *bonâ fide* and not been guilty of any gross and culpable neglect, he shall not be subject to any action. (Cf. *Martin v. Jameson*, *Cababé & Ellis*, p. 226.)

Actions,
independ-
ently of
interplea-
der pro-
ceedings.

By claim-
ant against
sheriff.

The cases of *Hollier v. Laurie* (3 C. B. 344), and *Abbott v. Richards* (13 M. & W. 194), in which it was held that the successful claimant might bring an action against the sheriff for trespass to the premises, though not for conversion of the goods, would not be followed, and must, it is submitted, be considered as having been overruled in the case of *Winter v. Bartholomew*. (In confirmation of this view, see the judgments in the recent case of *Smith v. Critchfield*, L. R. 14 Q. B. D. 873, C. A.)

Even if the claimant has a good title to the goods seized, and knows he has, it is an improper course for him to *at once* bring an action against the sheriff for an illegal seizure, before the sheriff has had time to interplead; and if he bring such action he will be ordered to pay his own costs of it. (*Hilliard v. Hanson*, L. R. 21 Ch. D. 69, C. A.; cf. *Aylwin v. Evans*, 52 L. J. Ch. 105.)

By execution creditor against sheriff.

With respect to an action by the execution creditor against the sheriff, as a general rule, as the order directing the issue restrains *any* action against the sheriff, this would of course include an action by the execution creditor. Generally speaking, the circumstances would not be such as to give the execution creditor any such right of action, unless he had sustained damage by reason of the sheriff's negligence in the matter of the execution.

However, in *Brackenbury v. Laurie* (3 Dowl. 180), where an issue was directed, it was made part of the order by Parke, B., that the sheriff should be dis-

charged from all liability *except for any neglect he may have been guilty of in executing the writ, and in not appointing a deputy according to the Act*: there being grounds on which the execution creditor claimed a right against him, if by reason of them he should be defeated in the issue.

The circumstances of the case do not appear to admit of any independent action by the sheriff, against either the execution creditor or the claimant; nor does any such action by the execution creditor against the claimant seem to be practicable.

The only other action possible therefore is one by the claimant against the execution creditor, and the order directing the issue, or otherwise disposing of the matter, may stay any such action. (*Carpenter v. Pearce*, 27 L. J. Ex. 143.) By claimant against execution creditor.

However, "no action" as a rule means no action against the sheriff only. (*Hook v. Ind, Coope & Co.*, 36 L. T. 467.)

It would seem that if the execution creditor has merely put the sheriff in motion to levy on the goods of his judgment debtor, by means of the writ of *fi. fa.* (and this is all that the execution creditor, as a rule, does) he cannot be liable to an action at the suit of any one, and in *Woollen v. Wright* (31 L. J. Ex. 503), it was held that his acceptance of an issue with the claimant in no way made him liable as having *ratified* a trespass by the sheriff, and the theory that he was liable on the ground that the sheriff, as his agent, had committed a trespass, was

distinctly rejected. *Walker v. Olding* (32 L. J. Ex. 142) is really no authority to the contrary, as there it was *assumed* that the execution creditor was liable to pay some damages, the only question being, what was the amount. As to whether the execution creditor really was in law liable at all, see the concluding remarks of the judgment of Pollock, C. B. (See too *Toppin v. Buckerfield*, 1 Cababé & Ellis, p. 157.)

Lewis v. Jones (2 Gale, 211; 2 M. & W. 203), however, is a case in which, where the execution creditor had given *special directions* to the sheriff as to the levy, and the particular goods to be seized, the order of the Court reserved to the claimant (1) a right to sue the sheriff for the damages, if any, sustained by the claimant, by reason of the alleged negligence and misconduct of the sheriff in levying (though the claimant was expressly forbidden to sue the sheriff in trespass for the seizure); and (2) a right to sue the execution creditor for damages sustained by his having constituted the sheriff his agent to levy on the goods of the claimant. The special directions in this case would seem to have created the relation of principal and agent, which, as a rule, does not exist.

The solicitor of the execution creditor has no implied authority from his client to direct the sheriff what goods he shall seize; and if he do so direct, the execution creditor will not be liable for the seizure on that ground, if wrongful. (*Smith v.*

Keal, L. R. 9 Q. B. D. 340, C. A.) "It is not within a solicitor's authority," said Lindley, L. J., "to tell the sheriff how to perform his duty. It is the sheriff's business to find out what goods to seize, and if he seizes the goods of the wrong person, such person has his remedy against the sheriff; but upon what principle can the innocent execution creditor be made liable? His solicitor is not his agent for the purpose of giving verbal directions to the sheriff, as distinguished from directions on the writ itself."

Nothing more need be here said as to the frame and construction of the issue, or the proceedings on and after it till judgment signed, as these in no way differ from the like matters in ordinary interpleader, where they are fully treated. (See *ante*, pp. 66—88.)

The same observations apply to the proceedings on a special case. (See *ante*, p. 66.)

Here, however, it will be right to advert to the effect which the bankruptcy of the execution debtor may have upon interpleader proceedings.

Effect
of bank-
ruptcy of
execution
debtor.

Of course, if the bankruptcy takes place at a time when the trustee in bankruptcy would gain no priority over the execution creditor to the goods or their proceeds, no reason presents itself why the matter should not be fought out between the execution creditor and the claimant. But §§ 45 and 46 of the Bankruptcy Act, 1883, give the trustee priority over the execution creditor in certain events, and under certain circumstances; and in those

events and circumstances the trustee will none the less have priority because interpleader proceedings are pending: for those proceedings only purport to regulate rights between the execution creditor and any claimants to the goods seized, and in no way affect the rights of the trustee in bankruptcy, representing as he does the general body of the creditors. (See *Ex parte Halling, In re Haydon*, L. R. 7 Ch. D. 157, C. A.; a case decided under the Bankruptcy Act of 1869.)

Notwithstanding the existence of an interpleader order, directing the sheriff to sell, he must comply with the directions of § 11, sub-sect. 1 of the Bankruptcy Act, 1890, and, on notice of a receiving order against the debtor, hand over the goods, if unsold, or their proceeds, if sold, to the official receiver. (*In re Harrison*, (1893) 2 Q. B. 111.)

Where, therefore, the execution creditor finds that even although he defeated the claimant on the issue, it would only result in his finding himself met by an overriding title in the trustee in bankruptcy, his best course is naturally to drop the interpleader proceedings, out of which he can in no event get the fruits of victory.

Interpleader proceedings, a stay of execution within s. 4 of the Bankruptcy Act, 1883.

Pending the determination of interpleader proceedings, the execution creditor cannot take bankruptcy proceedings against his debtor by serving upon him a bankruptcy notice under § 4, sub-sect. 1 (g), of the Bankruptcy Act, 1883; for the interpleader proceedings are, in substance, a stay of execution

within the meaning of that sub-section, and until their determination, the execution creditor is not in a position to again issue execution on his judgment. (*Ex parte Ford, In re Ford*, L. R. 18 Q. B. D. 369.)

In *Angell v. Baddeley* (L. R. 3 Ex. Div. 49; 47 L. J. Ex. 86; 37 L. T. 653; 26 W. R. 137), it was held that, pending the trial of an interpleader issue, the execution creditor had no absolute right to an immediate return to the writ. "The test whether the right is absolute or not," said Brett, L. J., "is to see whether the return would be of any use to the plaintiff. I cannot see that any return the sheriff can make to the writ pending the interpleader issue can be of any use to the plaintiff; the return would be futile." Pending interpleader proceedings, no absolute right to make sheriff immediately return writ.

It seems, too, from this case, that if the sheriff, after the usual order is made, that in default of the claimant giving security the sheriff do sell the goods, do *not* sell the goods on default being made, but withdraw from possession, the proper course for the execution creditor to take is to apply "to the Court or a judge, and claim the benefit of the interpleader orders, and call upon the sheriff to sell the goods" (*per* Bramwell, L. J., p. 53); and (*per* Brett, L. J.), "I am inclined to think that the sheriff might be attached for not obeying the order made at his own instance." (Cf., however, *Collins v. Cliff*, 8 L. T. N. S. 466.)

If a party takes any steps in violation of an inter-Attach-

ment for
contempt.

pleader order, he can be attached for contempt of Court.

Thus, in *Cooper v. Asprey* (32 L. J. Q. B. 209 ; 3 B. & S. 932), where, after service of the sheriff's interpleader summons on the claimant, the latter not only continued in possession of the goods, but proceeded to sell them, an order to attach him was made absolute. (Cf., too, *Angell v. Baddeley*, *ubi supra*.)

Costs.

With respect to the costs of the proceedings in sheriff's interpleader, the rule used to be that the sheriff should pay his own costs, however proper and meritorious his conduct might have been, it being deemed that a sufficient benefit had been conferred upon him by allowing him to interplead at all, and so relieve himself from a position of difficulty cast upon him by the law. (See *Barker v. Dynes*, 1 Dowl. 169 ; *Bryant v. Ikey*, 1 Dowl. 428 ; *Morland v. Chitty*, 1 Dowl. 520 ; and *Field v. Cope*, 1 Dowl. 567.)

This rule, however, has for some time past ceased to be followed, and a sheriff has been put in the same beneficial position, as regards the costs of the interpleader, as an ordinary stakeholder. For the present practice, as to the sheriff's costs, it will be best to cite the considered judgment of Field, J., in the case of *Searle v. Matthews* (W. N. 1883, p. 176), which was approved, followed, and regarded as a correct exposition of the law, by the Queen's Bench Division, in the case of *Goodman v. Blake* (L. R. 19 Q. B. D. 77).

"There have been recently before me," said Field, J., "several cases of interpleader, both by sheriffs and parties, in which the question raised has been whether the sheriff or party interpleading is entitled to costs, and, if so, at what point of time his right to them commences. The same question was brought before me several years ago, when I was at Chambers, and I took pains to inquire what had been the practice as well in the Courts of Common Law as in the Court of Chancery. I have again made inquiries as to the practice, and the result has been that, although the practice at Chambers of this Division has to some extent varied, the general rule seems to have been that which I am about to state, namely:—Where an order is made on the application of a sheriff, he is entitled to his costs from the period at which he has been called into interpleading action, that is to say, he is entitled, as against an unsuccessful claimant, to costs and possession money from the time of the notice of claim, or from the time of sale, whichever would be first; and where a sheriff is ordered to withdraw, he is entitled to costs, as against the execution creditor, from the time at which the latter authorized the carrying on of the interpleader proceedings, that is, generally from the return of the interpleader summons. In cases where the interpleader summons is taken out by the defendant in an action he is entitled, on bringing into Court the amount claimed, to deduct from it the amount of his

taxed costs up to that period, the question as to on which of the parties the ultimate liability for those costs is to fall being reserved. Of course, these rules are general only, and if, in any particular case the sheriff or party interpleading has unnecessarily caused any portion of the costs, he will not be entitled to recover, and may be called upon to pay costs."

(See, too, *per* Jessel, M. R., in *Ex parte Streeter, In re Morris*, L. R. 19 Ch. D. 216, C. A.; *Smith v. Darlow*, L. R. 26 Ch. D. 605; and *Todd v. M'Keevin*, (1895) 2 Ir. 400.)

Consistently with the concluding observations of his judgment in *Searle v. Matthews*, Field, J., held in *C. v. D.* (W. N. 1883, p. 207), that where, on a claim being made to the goods seized, the sheriff, without any authority from the execution creditor to resist the claim, and without any resistance in fact by the execution creditor to such claim, interpleaded, and the execution creditor withdrew, the execution creditor could not be called upon to pay the sheriff's costs of the interpleader proceedings so commenced, but that the sheriff must pay his own. (See, too, *Glazier v. Cooke*, 5 N. & M. 680.) So, also, in *Prosser v. Mallinson* (28 Sol. J., pp. 411, 616, C. A.), where the execution creditor, on ascertaining for the first time, on the hearing of the interpleader summons, what the plaintiff's claim was, at once withdrew, he was not ordered to pay the sheriff's costs. (See, too, *Carter v. Lawson*, 63 L. J. Q. B. 159.)

Where, however, the execution creditor, on receiving notice of the claim, instructed the sheriff to interplead, he was ordered, on subsequently consenting to the sheriff's withdrawal, to pay the latter's costs of the interpleader proceedings so commenced. (*Bransden v. Parker*, 1 Times Rep. 510, C. A.)

Unless there has been something wrong or vexatious in his conduct, the sheriff will never be ordered to pay the costs of either execution creditor or claimant, if his application to interplead be granted. (*Morland v. Chitty*, 1 Dowl. 520; *Bland v. Delano*, 6 Dowl. 293.)

If, however, the sheriff seeks to interplead in a case, or under circumstances in which he is not entitled so to do, and his application is refused, he will, as a rule, be ordered to pay the costs of both the other parties. (*Braine v. Hunt*, 2 Dowl. 391; *Bishop v. Hinaman*, 2 Dowl. 166; *Re Sheriff of Oxon*, 6 Dowl. 136.)

"The expenses of the execution," to which, under 43 Geo. III. c. 46, § 5, the sheriff is entitled, does not include the costs of interpleader proceedings, but it applies only to "poundage, sheriff's fees, and the like." (*Hammond v. Nairn*, 1 Dowl. N. S. 351.)

With respect to the expenses of the execution, the sheriff's right to his "poundage, sheriff's fees, and the like," depend on the legality of the seizure. If therefore it turns out that the goods belonged to the claimant, and ought not therefore to have been

seized, the sheriff will not get them. He cannot therefore retain them out of the proceeds of sale in the first instance, and he will only get them ultimately if the execution creditor succeeds. (*Barker v. Dynes*, 1 Dowl. 169; *Morland v. Chitty*, 1 Dowl. 550.)

As to "possession money," the sheriff will, as a rule, get it as from the date of his application, in any event (see *Searle v. Matthews*, *ubi supra*); because if the execution creditor ultimately succeeds, then the unsuccessful party will have to pay him his expenses of keeping possession (*Scales v. Sargeson*, 4 Dowl. 231); if the claimant succeeds, then the execution creditor will have to pay him these expenses. (*Dabbs v. Humphries*, 3 Dowl. 377; *Goodman v. Blake*, L. R. 19 Q. B. D. 77.) In fact, in this case, the sheriff may be regarded from the time of his application, in holding the goods, or their proceeds if he has sold them, as *agent* for the parties. He does it not merely in furtherance of his duties, but for the benefit of both parties. (*Underden v. Burgess*, 4 Dowl. 104; *West v. Rotherham*, 2 B. N. C. 527.) In *Gaskell v. Sefton* (14 M. & W. 802) it was decided that the term "possession money" did not include the cost of keeping cattle taken in execution: and so the sheriff, who in that case had been ordered to withdraw on payment of possession money, was not allowed to make an additional charge for the keep of cattle.

The sheriff is entitled to be paid the expenses

which he incurs in keeping possession of the goods seized, where he does so for the benefit of the parties, who have agreed that he shall keep in possession. (*Underden v. Burgess*, 4 Dowl. 104; cf. *Scales v. Sargeson*, 4 Dowl. 231.) The sheriff is further entitled, in the words of Williams, J., in *Armitage v. Foster* (1 H. & W. 208), "to the expenses he has been put to by acting in obedience to the rule of Court." (See, too, *Clarke v. Chetwode*, 4 Dowl. 635, where the sheriff was not allowed anything for keeping in possession during a period necessitated by his taking wrong proceedings which proved abortive.)

Any question as to the propriety of the sheriff's charges, as, *e.g.*, for possession money, can be dealt with on an application to tax his costs. (*Long v. Bray*, 10 W. R. 841.)

It should be remembered that, although the ultimate liability for the sheriff's "possession money" will rest upon the unsuccessful party (whom, therefore, if he be a solvent person, the sheriff may be content to look to for the same), yet that the sheriff is entitled to such possession money, as against all parties on whose behalf, and for whose benefit, he has held the goods. Where, therefore, a claimant was barred, and the sheriff had no faith in his solvency, it was held that the sheriff was entitled to an order allowing him to deduct the possession money from the proceeds of sale, as against the execution creditor, the latter, of course, having his remedy

over for the same against the unsuccessful claimant. (*Smith v. Darlow*, L. R. 26 Ch. D. 206, C. A.)

It is an improper course for the sheriff to appear on an appeal from an interpleader order, if his only interest in the appeal be to ask for costs, which costs have already been ordered to be paid to him by the so far unsuccessful claimant, and there is no suggestion that if the appeal be allowed the other party will not be able to pay them. If, under such circumstances, he do appear, he will get no costs of the appeal. (*Ex parte Webster, In re Morris*, L. R. 22 Ch. D. 136, C. A.)

If, however, the sheriff's appearance on appeal is necessary to protect his right to costs, he will get his costs of such appearance. (*Trickett v. Girdlestone*, 103 Law Times Jo. p. 81.)

If the sheriff calls upon a *landlord* to interplead, instead of satisfying his claim to rent, if it is a valid one, he will have to pay the costs of the landlord's appearance. (*Clarke v. Lord*, 2 Dowl. 55.)

Of execution creditor and claimant.

With respect to the costs of the execution creditor and of the claimant or claimants, of course if they both appear, the costs of the issue, or other proceeding by which the matter is settled, will, as in ordinary interpleader, have to be paid by the unsuccessful party. (*Bragg v. Hopkins*, 3 Dowl. 346; *Melville v. Smark*, 3 Sc. N. R. 357.)

With respect to the apportionment of costs, where both the parties are partially successful, see *ante*, pp. 95—97. Where by arrangement between the

execution creditor, claimant, and sheriff, the summons was postponed to make inquiries, and as a result of these inquiries the execution creditor abandoned his execution, the claimant's application for his costs incurred in attending the summons was refused. (*Swaine v. Spencer*, 9 Dowl. 347.)

If either the claimant or execution creditor failed to appear on the summons, having up to that time persisted in their claims, the reasonable order would seem to be to make the party not appearing pay the costs, just like an unsuccessful claimant who had appeared. Such would probably be the course adopted, notwithstanding some old authority to the contrary. (See *Jones v. Lewis*, 8 M. & W. 264; *Lambert v. Cooper*, 5 Dowl. 547.)

If after the direction of an issue, either the claimant or the execution creditor abandon the issue, the party thus in default will have to pay the costs of the other party up to the time of the abandonment, and also the costs of the application, if necessary, to obtain money out of Court. (*Dabbs v. Humphries*, 1 D. N. C. 412; 3 Dowl. 77; *Wills v. Hopkins*, 3 Dowl. 346.)

NOTE ON THE PRACTICE IN THE CHANCERY DIVISION AND IN BANKRUPTCY.

The provisions of Order LVII. applying to all divisions of the High Court, the practice there prescribed is applicable in its entirety to the Chancery Division.

The interpleader summons would come in the first instance before the Master, who represents the judge; and any party dissatisfied with the Master's decision may, as a matter of course, carry the matter before the judge himself.

The judge's summary decision would be final and without appeal, in all the cases previously dealt with. (See *ante*, pp. 56—59.)

With reference to any other course than a summary decision, which it is open to the judge to take, it is only necessary to say that if he direct an issue, it would, by virtue of Order XXXVI., rule 3, of the Rules of 1883, come on for trial before himself without a jury in the Chancery Division, unless he "otherwise ordered," as by directing a trial before a jury at common law. From the judge's decision on the issue (as distinguished from his final order determining the whole interpleader proceedings) there would be an appeal to the Court of Appeal. (*Dawson v. Fox*, L. R. 14 Q. B. D. 377, C. A.)

If an issue at common law be directed, and tried by a jury, the application for a new trial must be made to the Court of Appeal, and not to the Chancery Judge who directed the issue. (Order XXXIX., rule 1A, of the Rules of 1883.)

But, as in the Common Law Division, the distinction must be borne in mind between the proceedings incidental to the issue and the final order of the tribunal directing the issue.

For forms of interpleader proceedings in the

Chancery Chambers, see Seton on Judgments and Orders, Vol. I., pp. 436—448 (5th edit.), and Daniell's Chancery Forms, pp. 677—682 (4th edit.).

The jurisdiction as to interpleader in bankruptcy ^{In bank-} now rests on § 102 (1) of the Bankruptcy Act, 1883, ^{ruptcy.} which provides as follows:—

“Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice, or making a complete distribution of property in any such case.”

(As to the jurisdiction of the Court of Bankruptcy, under the Bankruptcy Act of 1869, see *Ex parte Sheriff of Middlesex, In re Buck*, L. R. 10 Ch. D. 575, C. A.)

The application would be made before the Registrar in the first instance, and from his decision, as representing the judge, or from that of the judge, if the matter were brought before the latter, an appeal would lie to the Court of Appeal, even in the case of a summary decision, for § 104 (2) (b) of the Bankruptcy Act expressly provides that orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:—

“An appeal shall lie from the Order of the High

Court to Her Majesty's Court of Appeal." (Cf. *Ex parte Streeter, re Morris*, L. R. 19 Ch. D. 216, C. A.: a case decided under the Bankruptcy Act, 1869.)

It may be observed, too, that by § 100 of the Bankruptcy Act, 1883, a County Court has for the purposes of its bankruptcy jurisdiction, all the powers and jurisdiction of the High Court. This would seem to confer on the County Courts a jurisdiction in interpleader under such circumstances. The appeal from the decision of the County Court on such interpleader would be to the Divisional Court, and from the Divisional Court, by leave of such Court, or of the Court of Appeal, to the Court of Appeal. (46 & 47 Vict. c. 52, § 2.)

CHAPTER III.

INTERPLEADER IN THE COUNTY COURTS.

THE jurisdiction in interpleader given to the Courts of Common Law by 1 & 2 Wm. IV. c. 58, was found to be so great a boon to the community in general, and particularly to sheriffs in the exercise of process, that upon the establishment of County Courts in 1846 it was determined to give those Courts a power to relieve high bailiffs, analogous to the power exercised by the Superior Courts for the relief of sheriffs.

Accordingly § 118 of the Act 9 & 10 Vict. c. 96,^{9 & 10 Vict. c. 96, § 118.} dealt with the right and method of interpleading in the County Courts.*

* By this section it was enacted that "if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof by any landlord for rent, or any person not being the party against whom such process has issued, it shall be lawful for the clerk of the Court, upon application of the officer charged with the execution of such process as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claims, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record or in any local and inferior Court in respect of such claim

Proceedings in interpleader were regulated under this provision until 1867, when the County Courts Act, 1867 (30 & 31 Vict. c. 142), was passed. This Act repealed the 118th section of 9 & 10 Vict. c. 96: but dealt with interpleader proceedings in its 31st section; by which and the provisions of Order XXI. of the County Court Rules of 1875, the practice was regulated until 1883, when the County Court Rules of 1875 were repealed, and the County Court Rules

shall be stayed, and the Court in which any such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the County Court; and the judge of the County Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suits brought in such Court."

It was a moot point under this section whether the County Court judge's jurisdiction was confined to the determination of the right to the goods in dispute, or whether he could go into the question of damages for trespass in the seizure of the goods, and other consequential damage. In *Mercer v. Stanbury* (25 L. J. Ex. 316), *Cater v. Chigwell* (15 Q. B. 217), and *Jones v. Williams* (4 H. & N. 704), the claimant who was successful was allowed afterwards to sue the execution creditor for damages for the trespass in the seizure of the goods. In *Foster v. Pritchard* (2 H. & N. 151) the successful claimant was allowed to sue the bailiff. But if the claimant were unsuccessful, even under this Act, he was not allowed subsequently to sue the bailiff for trespass (*Jessop v. Crawley*, 15 Q. B. 212; *Tinkler v. Hilder*, 4 Ex. 187), and of course he could not in such a case sue the execution creditor. As to the present law on this, see *Death v. Harrison*, L. R. 6 Ex. 15.

of 1883 substituted in lieu thereof. For these rules, however, the County Court Rules of 1889 are now substituted, and the County Courts Act of 1867 was repealed by the County Courts Act of 1888, which dealt with interpleader proceedings in its 157th section. The practice is therefore now regulated by this section, and by Order XXVII. of the County Courts Rules of 1889.

Section 157 provides as follows:—"If any claim shall be made to or in respect of any goods or chattels taken in execution, or in respect of the proceeds or value thereof, by any person, it shall be lawful for the registrar, upon application of the high bailiff as well before as after any action brought against him, to issue a summons calling before the Court as well the party issuing such process as the party making such claim, and the judge shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he shall think fit, and shall also adjudicate between such parties or either of them and the high bailiff with respect to any damage or claim of or to damages arising or capable of arising out of the execution of such process by the high bailiff and make such order in respect thereof and of the costs of the proceedings as to him shall seem fit, and such orders shall be enforced in like manner as any order in any action brought in such Court and shall be final and conclusive as between the parties, and as between them or either of them and the high bailiff, unless

High bailiff may interplead where claims as to goods taken in execution are made.

the decision of the Court shall be in either case appealed from, and upon the issue of the summons any action which shall have been brought in any Court in respect of such claim or of any damage arising out of the execution of such process shall be stayed."

Order XXVII. provides as follows:—

Notice of
claim to
execution
creditor.

Form 178.

Form 179.

Order for
possession
fees, where
claim
admitted.

Notice to
claimant
to make
deposit or
give secu-
rity.

1. Where a claim is made to or in respect of any goods or chattels taken in execution under the process of a Court it shall be in writing, and thereupon the high bailiff shall forthwith send notice to the execution creditor according to the form in the appendix, and if the execution creditor admits the title of the claimant to the goods or chattels, and sends notice in due course of post to the high bailiff of such admission, according to the form in the appendix, or to the like effect, he shall only be liable to such high bailiff for any fees of possession or expenses incurred prior to the receipt of such notice; and the judge may, if he shall think fit, on application by the high bailiff, make an order for payment of any such fees or expenses by the execution creditor to the high bailiff. Any such application shall be made in writing and intituled, in the matter of the execution, and three clear days' notice in writing thereof shall be given by the high bailiff to the execution creditor.

1A. (b) The high bailiff shall also forthwith send notice to the claimant according to the Form 179a in the appendix, requiring him to make deposit

or give security in accordance with § 156 of the Act.

1b. (c) Where the execution creditor gives notice in due time to the high bailiff as directed by Rule 1 of this Order, that he admits the title of the claimant to the goods or chattels, the high bailiff may thereupon withdraw from possession and may apply for an order protecting him from any action in respect of the seizure and possession of the said goods and chattels, and the judge may make any such order as may be just and reasonable in respect of the same. Any such application shall be made in writing and intituled, in the matter of the execution, and three clear days' notice in writing thereof shall be given by the high bailiff to the claimant, who may, if he desires it, attend the hearing of the application, and if he attend the judge may, in and for the purposes of this application, make all such orders as to costs as may be just and reasonable.

Power to make order protecting high bailiff from action by claimant where execution creditor admits claim before interpleader summons is issued.

2. Where the execution creditor does not in due time, as directed by Rule 1 of this Order, admit the title of the claimant to the goods or chattels, and the claimant persists in his claim thereto, the high bailiff shall apply for an interpleader summons to be issued, and should the claimant withdraw his claim or execution creditor file an admission of the title of the claimant prior to the return-day of such summons, and at the same time give notice of such admission to the claimant, the judge may, in and for the purposes of the interpleader proceedings, make

Form 179a. 51 & 52 Vict. c. 43, § 156. Where execution creditor does not admit claim.

all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

Proceeding
generally.
51 & 52
Vict. c. 43,
§ 156.

3. Where any claim is made to or in respect of any goods or chattels taken in execution or in respect of the proceeds or value thereof, and summonses have been issued on the application of the high bailiff, such summonses shall be served in such time and mode as by these rules directed for an ordinary summons to appear to a plaintiff, and the case shall proceed as if the claimant were the plaintiff and the execution creditor the defendant; provided that where the claimant has not made deposit or given security in accordance with § 156 of the Act, the time of service may, if the high bailiff so desires by leave of the judge or registrar, be such time as will obtain a speedy decision on the claim.

Claimant
to lodge
particulars
and
grounds
of claim.
Forms 180,
181.

4A. (d) The claimant shall, five clear days at least before the return-day, deliver to the high bailiff, or leave at the office of the registrar two copies of the particulars of any goods or chattels alleged to be the property of the claimant and of the grounds of his claim, and in case of a claim for rent of the amount thereof, and for what period, and in respect of what premises the same is declared to be due, and the name, address, and description of the claimant shall be duly set forth in such particulars, and the high bailiff shall forthwith send by post to the execution creditor or his solicitor one of the copies of such particulars. Any money paid into court under the execution shall be retained by the registrar until the

claim shall have been adjudicated upon, provided that by consent of all parties or without such consent if the judge shall so direct an interpleader claim may be tried although the rule has not been complied with.

5. The judge upon the hearing shall adjudicate upon any claim of the high bailiff for possession fees, and may, if he shall think fit, order the same or such part thereof as he may think just to be paid by the claimant or by the execution creditor.

High bailiff's possession fees.

6. In the event of the claimant of any goods taken in execution not making, in accordance with the provisions of § 156 of the Act, a deposit with the bailiff either of the amount of the value of the goods claimed, or of the sum which the bailiff is allowed to charge as costs for keeping possession of such goods until a decision can be obtained, the bailiff may in his discretion delay selling such goods until the judge shall have adjudicated on such claim, and for the keeping of such continued possession he shall be allowed such costs out of pocket only as the judge may order.

Where claimant fails to comply with provisions of 51 & 52 Vict. c. 43, § 156.

7. Where the claimant to goods taken in execution claims damages from the execution creditor or from the high bailiff for or in respect of the seizure of the goods he shall, in the particulars of his claim to the goods, state the amount he claims for damages and the grounds upon which he claims damages.

Claim for damages.

8. Where an execution creditor claims damages against a high bailiff arising out of the execution of

Claim of damages against high bailiff.

Form 193. any process he shall, five clear days before the return-day, deliver to the high bailiff a notice of such claim, stating the grounds and amount of such claim.

Payment into Court of damages claimed under 51 & 52 Vict. c. 43, § 166. 9. Where a claim for damages under § 157 of the Act is made against any high bailiff and execution creditor or either of them, they or either of them may pay into Court money in full satisfaction of such claim for damages, and such payment into Court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies as they would respectively have if the proceeding were an action in which the claimant was plaintiff and the high bailiff and judgment creditors defendants.

Inter-pleader summons. 10. Interpleader summonses shall be issued by the registrar on the application of the high bailiff without leave of the judge, and shall be served on the solicitor of any party who acts by a solicitor.

Whence issued. 11. Interpleader summonses shall be issued from the Court of the district in which the levy was made, and the execution creditor and claimant shall be summoned to such Court.

Judge may direct sale of goods claimed under a bill of sale, &c. 12A. (a) When goods or chattels have been seized in execution under process of the Court, and any claimant alleges that he is entitled under a bill of sale or otherwise to such goods or chattels by way of security for debt, the judge may order a sale of the whole or part thereof, and may direct the application of the proceeds of such sale in such manner and upon such terms as may be just. A duplicate of such

order shall be delivered by the registrar to the high bailiff, who shall thereupon forthwith sell the goods or chattels pursuant to the order, and after deducting the expenses of the sale, and the taxes, and rent, if any, directed by the owner to be paid, shall pay the balance of the proceeds into Court, and such balance shall thereupon be applied by the registrar in accordance with the directions contained in the order of the Court.

12B. (a) The order made upon the hearing of an interpleader summons shall be according to such of the forms in the Appendix as shall be applicable to the case, and such order shall contain directions as to how any moneys paid into Court in the proceedings are to be disposed of.

12c. (b) Forms 182 to 192, 196, 197 and 199 in the Appendix to the County Court Rules, 1889, are hereby annulled, and Forms 182a to 192a, 196a, 197a and 199a in the Appendix shall stand in lieu thereof.

13A. (c) Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed as to the whole or any part of such debt or chose in action by the assignor or any one claiming under him—or where the defendant in any such action, or in any other action for any debt, chose in action, money, goods or chattels has had notice of any other opposing or conflicting claims to the whole or any part of such debt, chose in action, money, goods or chattels—such defendant may, within five days of the service

Order on
inter-
pleader.

Forms in
inter-
pleader
182a to
192a, 196a,
197a, 199a.

Inter-
pleader in
action by
assignee,
where
assignor
disputes
assign-
ment, or
in action
for debt,
chose in
action, or
chattel
where
defendant
has notice
of conflict-
ing claims.

of the summons, apply to the registrar for a summons against the assignor or the person making such opposing or conflicting claim hereinafter called the claimant.

(2.) The defendant must satisfy the registrar by Form 134a. affidavit, according to the Form 134a in the Appendix, that he claims no interest in the subject matter in dispute, other than for charges or costs, and does not collude with either the plaintiff or the claimant, and is willing to pay or transfer the subject matter into Court, or dispose of it as the Court may direct. On filing such affidavit, the defendant shall lodge with the registrar copies thereof for the plaintiff and the claimant.

(3.) The defendant shall not be disentitled to relief by reason only that the titles of the plaintiff and the claimant have not a common origin, but are adverse to and independent of each other.

(4.) The registrar shall, on being satisfied as aforesaid, issue for service on the claimant an inter- Form 135a. pleader summons according to the Form 135a in the Appendix, returnable as soon as conveniently may be, and shall annex thereto a copy of the original summons and of the defendant's affidavit, and shall adjourn the trial of the action to the day on which the interpleader summons is made returnable, and shall give notice to the plaintiff and defendant of the issue of the interpleader summons and of the adjournment of the trial of the action, according to the Forms 135b and 135c in the Appendix.

(5.) The claimant shall, five clear days at least before the return day of the interpleader summons, leave at the office of the registrar, either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment, or founds his claim to the subject matter in the action, and the registrar shall forthwith send by post one of such copies to the plaintiff or his solicitor, and one other of such copies to the defendant or his solicitor. Provided that by consent of all parties or without such consent if the judge shall so direct the interpleader may be tried although this rule has not been complied with.

(6.) On filing his affidavit, or any time after the issue of the interpleader summons, the defendant may pay the debt or money, or bring the chose in action, goods or chattels into Court to abide its decision.

(7.) Upon the return day of the interpleader summons—

(a) If the plaintiff does not appear, the action and interpleader summons shall be struck out, and the judge may make such order as to costs as may be just.

(b) If the claimant does not appear, the judge shall hear and determine the action as between the plaintiff and the defendant, and may make an order declaring the claimant and all persons claiming under him for ever barred against the defendant, and all persons claiming under

Payment
into Court
by defen-
dant.

Inter-
pleader,
how dis-
posed of.
Where
plaintiff
does not
appear.

Where
claimant
does not
appear.

him, and may make such order as to costs against the claimant as may be just, but the order shall not affect the rights of the plaintiff and the claimant between themselves, or if the claimant has filed notice that he relinquishes his claim, the judge may make an order declaring him and all persons claiming under him for ever barred against both the plaintiff and the defendant, and all persons claiming under them, and may make such order against the claimant as to costs incurred by the other parties before the receipt of notice of relinquishment as may be just.

Where
both
appear.
Forms
136a, 137a,
138a.

- (c) If both the plaintiff and the claimant appear, the judge shall, whether the defendant does or does not appear, hear the cases of the plaintiff and the claimant (and the case of the defendant if he appears), and shall give such judgment thereon as shall finally determine the rights and claims of all parties, but the judge shall not make any order in favour of the claimant against the defendant unless the claimant requests him so to do.

Discovery,
trial, costs,
and in-
cidental
matters.

- (8.) Orders XVI. and XXII. shall with the necessary modifications apply to the interpleader proceedings, and the judge may in and for the purposes of any such proceedings make all such orders as to costs and all other matters (including the repayment to the defendant of any costs paid by

him into Court and the disposal of any money, chose in action, goods or chattels paid or brought by the defendant into Court), as may be just and reasonable.

The course of proceedings then is as follows :—

The Bailiff, having taken the goods or chattels in *Procedure*, execution, receives written notice from the claimant of his claim to the goods.

The course to be taken by the Bailiff upon the receipt of this notice will depend upon whether the goods seized by him have been sold, or still remain unsold.

If the goods still remain unsold, the Bailiff must forthwith give notice of the claim to the execution creditor, so as to give the latter an opportunity of at once admitting the claim, and so save further expense. (See Form 1 in Appendix E.) Upon receipt of this notice it will be for the execution creditor to consider whether or no he is minded to admit the claim. If he is so minded, then he must in due course of post, after receipt of the Bailiff's notice, send to the latter notice of such admission. (See Form 2 in Appendix E.) By so doing, the execution creditor confines his liability to the Bailiff to the fees of possession and expenses incurred prior to the receipt by the Bailiff of such notice. The Bailiff must also forthwith give the claimant notice requiring him to make deposit or give security in accordance with § 156 of the Act of 1888. (See Form 3 in Appendix E.)

Upon the execution creditor admitting the claimant's title, all that remains to be done is for the High Bailiff to withdraw, and on giving notice to the execution creditor and the claimant, to apply to the judge for an order for his possessions, fees and expenses from the former, and also for an order protecting him from any action at the suit of the latter.

If, however, the execution creditor does not admit the title of the claimant, and the latter desires that the goods should not be sold, pending the determination of the question, then he must comply with the provisions of § 156 to which the Bailiff's notice has already called his attention. That section provides as follows:—"Where any claim shall be made to or in respect of any goods taken in execution under the process of the Court, the claimant may deposit with the Bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisement, in case of dispute, to be by such Bailiff paid into Court, to abide the decision of the judge upon such claim, or the sum which the Bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, or may give to the Bailiff in the prescribed manner security for the value of the goods claimed, and in default of the claimant so doing, the Bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale, to abide the decision of the judge."

If the claimant do not comply with this condition, the Bailiff has a *right* to proceed to sell; but he is not *bound* to do so, but may, in his discretion, delay the sale under Rule 6, remaining in possession, and being paid therefor, as provided in such rule. (Cf. *Cramer v. Matthews*, L. R. 7 Q. B. D. 425.) If, after such deposit, the execution creditor succeed in the interpleader proceedings and take the money so deposited, he cannot, if the sum is insufficient to satisfy his judgment, seize the same goods again in respect of the same judgment. (*Haddow v. Morton*, (1894) 1 Q. B. 95, 565.)

If the Bailiff sell, under § 156, the purchaser from him obtains a good title to the property, even though the goods were the property of the claimant. (*Goodlock v. Cousins*, (1897) L. R. 1 Q. B. 558.)

The Bailiff then, if the goods have been sold, or if, though still unsold, the proceedings have not been determined as above mentioned, applies to the registrar of the Court of the district in which the levy has been made to issue an interpleader summons. (Rules 10 and 11.) Such summons will be served upon the execution creditor and the claimant in such time and mode as Order VII. of the Rules of 1889 direct for service of an ordinary summons to appear to a plaint (r. 3); and if either the execution creditor or the claimant be acting by a solicitor, it will be served upon such solicitor (r. 10). If the claimant has only given notice of his claim to the goods or monies taken in execution, he will be

served with a summons in the Form 7 in Appendix E., and the execution creditor will be served with a summons in Form 6.

If the claimant's claim is in respect of rent, Form 8 will be the form of summons served upon him.

If the claimant has given notice of his claim to *damages* as well as to the property levied upon, then Forms 9 and 10 will be the forms of the summonses served on the execution creditor and the claimant respectively.

By the very words of § 157 of the Act of 1888, the effect of the issue of the summons is "to stay any action which shall have been brought in any Court in respect of such claim, or of any damage arising out of the execution of such process."

Stay of
actions.

Any action, therefore, brought by the claimant against the Bailiff, or other officers of the Court, will be stayed, even though the goods were sold before the interpleader proceedings were commenced. (*Hills v. Renny*, L. R. 5 Ex. D. 313, C. A.) But the words "any action" must be read as meaning any action in respect of matters which it would be competent to the County Court judge to deal with on the hearing of the interpleader; and as a claim by the claimant against the purchaser of the goods seized, from the Bailiff, is not such a matter, such an action will not be stayed. (*Hills v. Renny*, *ubi supra*.) The claimant must then, five clear days before the

return day, deliver to the Bailiff, or leave at the office of the registrar, two copies of the particulars of the goods he claims, and of the grounds of his claim thereto, and comply in all other respects with the express terms of Rule 4. (For form of such particulars, in the case of a claim to goods, see Form 4; and in the case of a claim for rent, Form 5.) If the claimant desires to set up a claim for damages against the execution creditor or High Bailiff for or in respect of the seizure of the goods, he must insert in his particulars the amount he claims for such damages, and the grounds upon which he claims them. (Rule 7.) At all events, whether he claims such damages or not, he can maintain no subsequent action in respect of them. (*Death v. Harrison*, L. R. 6 Ex. p. 15.) Possibly the execution creditor may conceive himself to have some claim for damages against the Bailiff in respect of neglect or laches on his part in the matter of the execution, whereby he deems himself injured. If so, he must, in accordance with Rule 8, serve, five clear days before the hearing, a notice of such claim on the Bailiff. (See Form 17, in Appendix E.)

With respect to the particulars and grounds of his ^{Particulars.} claim which the claimant is required to deliver five clear days before the return day, there have been several decisions, chiefly under the former County Court Rules, which, however, were, in this respect, practically identical with Rule 4a of Order XXVII. of the Rules of 1889.

In *Ex parte Tanner* (19 L. J. N. S. Q. B. 318), it was held that where the only information in the nature of particulars given by the claimant was the allegation in his notice of claim that the goods taken were, at the time of their seizure, his property, and not the property of the judgment debtor, this was insufficient, and that the County Court judge was right in refusing to hear any evidence in support of the claim.

But in *The Queen v. Richards* (20 L. J. Q. B. N. S. 350) it was held that the County Court judge was wrong in holding particulars which alleged that "the horses seized were assigned to us by an Indenture dated the 28th of March, 1850, and made between Thomas Holbrook, the defendant, of the one part, and ourselves of the other part," insufficient; and the case was remitted to him to adjudicate upon the merits.

So, too, in *The Queen v. Stapylton* (21 L. J. Q. B. 8), where the County Court judge held that particulars (given with the notice of claim), alleging "that by a certain indenture dated, &c., and made between the judgment debtor of the one part and me of the other part, the judgment debtor granted and assigned unto me all the household goods, furniture, personal estate and effects, &c., about his houses, brewery, and premises," and claiming all such goods as aforesaid mentioned, which had been seized under the writ, were insufficient, the case was remitted to him to adjudicate upon, the par-

ticulars being deemed sufficient by the Superior Court.

In *Ex parte M'Fee* (23 L. J. Ex. 57; 9 Ex. 361), it was held that the County Court judge was wrong in deeming particulars insufficient because the claimant was addressed in the particulars as of 24, Elizabeth Street, Islington, whereas his true address was 20 Elizabeth Terrace, Islington.

In *Churchward v. Coleman* (L. R. 2 Q. B. 18), it was held that the County Court judge was wrong in holding that the particulars and grounds of claim alleging that the goods and effects in and about the house and premises of the defendant situate at North Camp, seized under a writ of execution herein, are the property of the claimants, the trustees appointed by a deed dated, &c., by which the judgment debtor conveyed all his estate and effects to the claimants absolutely, to be administered for the benefit of all the creditors as if he had been adjudicated bankrupt, were insufficient.

In remitting this case to the County Court, the Court (dissenting in this respect from *Whitehead v. Procter, q. v. infra*) held that it had no jurisdiction under 19 & 20 Vict. c. 108, § 43, to interfere with the County Court judge's order as to costs.

In *Richardson v. Wright* (L. R. 10 Ex. 307) the Court of Exchequer were equally divided upon the question whether the County Court judge was right in holding that *grounds* stating that the goods were the property of the claimant, and were at the time

of the seizure in his possession were insufficient. It is submitted that the grounds of claim were amply sufficient in this case.

Payment
into Court.

Where a claim is made against the execution creditor or the High Bailiff for damages, then they are empowered by Rule 9 to pay money into Court: the effect of such payment is stated in the rule.

The action then comes on in the ordinary course for hearing, the case proceeding as if the claimant were the plaintiff and the execution creditor the defendant.

Jury.

If either party require a jury, he is entitled to it, on giving four clear days' notice of demand therefor in writing to the registrar (Order XXII., rr. 1 and 3). If no such notice be given, the case will be tried by the judge alone.

Rule 12a, it will be noted, confers on the County Court judge the same powers as to a sale, in case the claimant is a bill of sale holder, as Rule 12 of Order LVII. confers on the judge of the High Court. (See *ante*, pp. 106—109.)

Onus of
proof at
trial.

Nothing need be said here as to the proceedings at the trial, save that it is well to remember that, if the execution debtor was in possession of the goods when seized by the Bailiff, the onus of proof lies on the claimant, who, to succeed, must prove that the goods were in fact his goods; if, on the other hand, the claimant be in possession, the onus is on the execution creditor, who, to succeed, must prove that the goods in fact belonged to the execution debtor. In

the possible event of the goods being seized in the possession of some third party, who did not claim them, it should seem that here too, if the claimant intervenes, he can only justify his intervention and succeed by proof that the goods were his. (See *ante*, pp. 72—79, and the cases there cited.) The judgment may be either for the claimant, the execution creditor, or the Bailiff if he is a party, or against one or more of these parties. Again, the claimant may succeed as to the goods, but not as to the damages, or *vice versa*. Or money may be paid into Court in respect of the damage claimed, and may be sufficient or insufficient. According as any one of these possible events occurs, such will be the form of the order made. (See Forms 11 to 22 inclusive in Appendix E.)

It would seem (*Beswick v. Boffey*, 9 Ex. 315; 23 L. J. Ex. 83) that it is not the right course for the County Court judge to decline to go into the merits merely on the ground that the particulars and grounds of claim are not as full or explicit as they should be, or because they have not been delivered in time. "If the particulars," said Martin, B., "have not been delivered in time, and the opposite party insists upon having five days' notice, a new summons must issue, and the real merits be adjudicated upon when all the preliminary matters have been complied with; and the judge has a discretion as to giving costs, like a judge at chambers. Indeed, it would be absurd to say that, through a mere

mistake in not properly setting out the particulars of claim, the goods of one person are to be taken to pay the debt of another."

In *Whitehead v. Procter* (3 H. & N. 532), the Court remitted the matter to the County Court judge for rehearing, where, on the grounds of insufficient particulars, he had refused to decide the question on the merits, but decided summarily against the claimant.

Rule 4a, it will be observed, too, provides that, with the consent of the parties, or without such consent if the judge shall so direct, the claim may be tried, although all the provisions of the rule have not been complied with.

The hearing is the proper time for the judge to adjudicate upon any claim of the High Bailiff for possession fees, and to order the claimant or execution creditor to pay the whole or any part thereof.

Costs.

As to costs, they are left, by § 157 of the Act of 1888, to the discretion of the judge. As a rule, the unsuccessful party has to pay all the costs, the Bailiff getting his primarily out of the fund in dispute if in his hands.

It was held, in an old case (*Blore v. Houston*, 15 C. B. 266) that if the Bailiff did not retain his costs out of the amount levied, he could not, if the claimant were ordered to pay the costs, sue the execution creditor for them.

Execution for costs can be had against the party ordered to pay them. (See Form 23 in Appendix E.)

Different scales of costs obtain in the County Courts, depending upon the value of the subject-matter, or sum recovered; and on this subject, Order La., r. 12, provides as follows:—

Scale of costs.

“The subject-matter in an interpleader proceeding shall mean (1) in the case of a claimant, the amount of the value of the goods his claim to which is allowed plus the amount of the damage (if any) adjudged; (2) in the case of an execution creditor, the amount of the value of the goods seized plus the amount (if any) of the damage claimed; and (3) in the case of a High Bailiff, the amount of the damages claimed.”

Under the above rule, it has been held that it is the real value of the goods of the claimant that are seized that determines the value of the subject-matter, and not the amount deposited in Court by the claimant. (*Studham v. Stanbridge*, (1895) 1 Q. B. 870.)

There are no express provisions in the rules as to applications for a new trial in interpleader proceedings, unless the words in Rule 3, “and the case shall proceed as if the claimant were the plaintiff and the execution creditor the defendant,” are to be regarded as incorporating all the provisions of the County Court Rules as to the trial of ordinary County Court actions, so far as applicable. Probably these words have this effect, and no doubt there can be an application for a new trial, as in the case of an ordinary action.

Appeal.

A right of appeal (which did not originally exist) from the County Court judge's decision was given by 19 & 20 Vict. c. 108, § 68, which gave it where the money claimed, or the value of the goods or chattels claimed, or of the proceeds thereof, exceeds £20.

This same right now exists by virtue of § 120 of the Act of 1888, which gives a further right of appeal, by *leave of the judge*, even though the amount or value may not exceed the £20.

The amount exceeds £20 within the meaning of the rule if the value of the goods seized exceeds £20, although the original debt in respect of which they were seized is less than that sum. (*Vallance v. Nash*, 3 H. & N. 712; 27 L. J. Ex. 142.)

On the other hand, the amount of damages claimed by the claimant against the execution creditor and the High Bailiff cannot be added to the value of the goods claimed so as to bring the amount over the £20 limit. (*Lumb v. Teal*, L. R. 22 Q. B. D. 675.)

If the goods are appraised under § 156 of the Act of 1888, and the deposit made in accordance therewith, such appraised value is the value of the goods for the purposes of appeal. (*White v. Milne*, 58 L. T. 225.)

Interpleader proceedings cannot be removed into the High Court by certiorari. (*Ex parte Summers*, 18 Jur. 522.)

The proceedings in the County Court where a debt has been assigned, and there are conflicting claims

to the debt, require no comment, being fully described in Rule 13a.

NOTE ON INTERPLEADER IN THE MAYOR'S COURT.

By §§ 32—35 of the Mayor's Court of London Procedure Act, 1857 (20 & 21 Vict. c. clvii.), a right was conferred upon a defendant sued in that Court, and also upon the Serjeant-at-Mace, to interplead in almost the same terms in which the Interpleader Act had conferred the right upon defendants and sheriffs in the High Court. By an Order in Council of 1879, §§ 12—18 of the Common Law Procedure Act, 1860, were rendered applicable to such interpleader proceedings in the Mayor's Court, and, notwithstanding the repeal of all these sections of the Common Law Procedure Act (except § 17), they are still applicable to interpleader in the Mayor's Court by virtue of § 7 of the Statute Law Revision and Civil Procedure Act, 1883.

The following is a form of interpleader summons by a defendant sued in the Mayor's Court:—

In the Mayor's Court, London.

Between *A. B.*, Plaintiff,

and

C. D., Defendant.

Whereas the defendant herein has stated to the Court that he does not claim any interest in the subject-matter of this suit, but that the right thereto is claimed by, or is supposed to belong to you. Take notice, therefore, you are hereby sum-

INTERPLEADER.

moned and required to attend at the sitting of this Court, at the Guildhall of the City of London, on the day of at o'clock in the noon, to state the nature and particulars of your claim, and to maintain or relinquish the same.

And further take notice, that if you do not appear hereto, you, and all persons claiming by, from, or under you, will be for ever barred from prosecuting your claim against the said defendant, or his executors or administrators.

Dated this day of , 1888.

APPENDICES.

APPENDIX A.

STATUTES AND ORDERS AT PRESENT REGULATING INTERPLEADER PROCEEDINGS.

ORDER LVII. OF THE RULES OF THE SUPREME COURT, 1883.

1. Relief by way of interpleader may be granted :—

(a) Where the person seeking relief (in this order called the applicant) is under liability for any debt, money, goods, or chattels for or in respect of which he is, or expects to be, sued by two or more parties (in this order called the claimants) making adverse claims thereto.

Interpleader, when allowed.

(b) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

2. The applicant must satisfy the Court or a judge by affidavit or otherwise :—

Affidavit in support.

(a) That the applicant claims no interest in the subject-matter in dispute other than for charges or costs ; and

(b) That the applicant does not collude with any of the claimants ; and

(c) That the applicant, except where he is a sheriff or other officer charged with the execution of process by or under the

authority of the High Court, who has seized goods, and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under Rule 16 of this order, is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a judge may direct.

Claimants' titles.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

Time for application.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

Mode of application.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

Power to stay proceedings.

6. If the application is made by a defendant in an action, the Court or a judge may stay all further proceedings in the action.

Procedure on appearance of claimants.

7. If the claimants appear in pursuance of the summons, the Court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant.

Summary decision.

8. The Court or a judge may, with the consent of both claimants, or on the request of any claimants, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

Courses open when dispute only one of law.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a

special case is stated, Order XXXIV. shall, as far as applicable, apply thereto.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves. When claimant may be barred.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a judge in a summary way, under Rule 8 of this order, shall be final and conclusive against the claimants and all persons claiming under them, unless by special leave of the Court or judge, as the case may be, or of the Court of Appeal. When judgment is final.

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. Power to order sale of goods seized in execution.

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader issue; and the Court or judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. Discovery and mode of trial.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several divisions, or before different judges of One order in several matters.

the same division, such order may be made by the Court or judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matter; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

Costs, &c. 15. The Court or a judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs, *and all other matters*, as may be just and reasonable.

Sheriff's costs. 16. Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court, it shall be in writing; and upon the receipt of the claim the sheriff or his officer shall forthwith give notice thereof to the execution creditor according to Form 28 in Appendix B., or to the like effect, and the execution creditor shall, within four days after receiving the notice, give notice to the sheriff or his officer that he admits or disputes the claim according to Form 29 in Appendix B., or to the like effect. If the execution creditor admits the title of the claimant and gives notice as directed by this rule, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Withdrawal by sheriff. 16A. When the execution creditor has given notice to the sheriff or his officer that he admits the claim of the claimant, the sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the judge or master may make any such order as may be just and reasonable in respect of the same: Provided always that the claimant shall receive notice of such intended application, and, if he desires it, may attend the hearing of the same, and, if he attend, the judge or master may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable.

Costs in 17. Where the execution creditor does not in due time, as

directed by the last preceding rule, admit or dispute the title interpleader. of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may apply for an interpleader summons to be issued; and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the judge or master may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as may be just and reasonable.

23 & 24 VICT. c. 126 (COMMON LAW PROCEDURE ACT, 1860).

§ 17. The judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

36 & 37 VICT. c. 66 (JUDICATURE ACT, 1873).

§ 25, sub-sect. 6. Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt and chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good

discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing and conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

47 & 48 VICT. C. 61 (JUDICATURE ACT, 1884).

Power to
transfer
inter-
pleader
proceed-
ings into
County
Court.
28 & 29
Vict. c. 99.

§ 17. If it shall appear to the Court or a judge that any proceeding now pending or hereafter commenced in the High Court of Justice by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of £500 (being the limit of the equitable jurisdiction given to County Courts by the County Courts Act, 1865) may be more conveniently tried and determined in a County Court, the Court or judge may at any time order the transfer thereof to any County Court in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question; and every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under § 8 of the County Courts Act, 1867; and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any County Court rules for the time being in force.

30 & 31
Vict. c. 142.

APPENDIX B.

STATUTES AND ORDERS REGULATING INTER-
PLEADER PREVIOUSLY TO 1883.

1 & 2 WILL. IV. c. 58.

An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims. [20th October, 1831.]

WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third person, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same, that upon application made by or on the behalf of any defendant sued in any of his Majesty's Courts of Law at Westminster, or in the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, in any action of assumpsit, debt, detinue, or trover, such application being made after declaration, and before plea, by affidavit or otherwise, shewing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to

Upon application by a defendant in an action of assumpsit, &c., stating that the right in the subject-matter is in a third party, the Court may order such

third party
to appear
and main-
tain or
relinquish
his claim,
and in the
meantime
stay pro-
ceedings
in such
action.

sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject-matter of the action in such manner as the Court (or any judge thereof) may order or direct, it shall be lawful for the Court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff and such third party, their counsel or attorneys, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Judgment
and deci-
sion to be
final.

§ 2. And be it further enacted, that the judgment in any such action or issue as may be directed by the Court or judge, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

If such
third party
shall not
appear,
&c., the
Court may
bar his
claim
against the
original
defendant.

§ 3. And be it further enacted, that if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving nevertheless the right or claim of such third party against the plaintiff; and thereupon to make

such order between the defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

§ 4. Provided always, and be it further enacted, that no order shall be made in pursuance of this Act by a single judge of the Court of Pleas of the said County Palatine of Durham who shall not also be a judge of one of the said Courts at Westminster, and that every order to be made in pursuance of this Act by a single judge not sitting in open Court shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single judge.

Proviso as to orders made by a single judge.

§ 5. Provided also, and be it further enacted, that if upon application to a judge, in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court; and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of Court instead of the order of a judge.

If a judge thinks the matter more fit for the decision of the Court, he may refer it.

§ 6. And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said Courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons, not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such sheriff or other officer, made before or after the return of such process, as well before as after any action brought against such sheriff or other officer, to call before them, by rule of Court, as well the party issuing such process as the

For relief of sheriffs and other officers in execution of process against goods and chattels.

party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case: and the costs of all such proceedings shall be in the discretion of the Court.

Rules,
orders, &c.
made in
pursuance
of this Act
may be
entered
of record,
and made
evidence.

§ 7. And be it further enacted, that all rules, orders, matters, and decisions to be made and done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by such order; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *fiery facias* or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution, if by *fiery facias*; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court.

Costs.

Writs.

Sheriff's
fees.

Upon any
applica-
tion under
1 Wm. IV.
c. 21, and
this Act,
the Court
to exer-
cise such

§ 8. And whereas by a certain Act made and passed in the last session of Parliament, intituled "An Act to improve the Proceedings in Prohibition and on Writs of Mandamus," it was, among other things, enacted, that it should be lawful for the Court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned, to make rules and orders calling not only upon the person to

whom such writ may be required to be issued, but also all powers and
 and every other person having or claiming any right or make such
 interest in or to the matter of such writ, to shew cause rules as
 against the issuing of such writ and payment of the costs of are given
 the application, and upon the appearance of such other by or men-
 person in compliance with such rules, or, in default of tioned in
 appearance after service thereof, to exercise all such this Act.
 powers and authorities, and to make all such rules and
 orders applicable to the case, as were or might be given or
 mentioned by or in the Act passed during that present
 session of Parliament for giving relief against adverse
 claims made upon persons having no interest in the subject
 of such claims; and whereas no such Act was passed during
 the then present session of Parliament, be it therefore enacted,
 that upon any such application as is in the said Act and
 hereinbefore mentioned, it shall be lawful for the Court to
 exercise all such powers and authorities, and make all such
 rules and orders applicable to the case, as are given or
 mentioned by or in this present Act.

By 1 & 2 Vict. c. 45, § 2, a judge of the Common Law
 Courts was given the same jurisdiction in sheriff's inter-
 pleader as 1 & 2 Will. IV. c. 58, had conferred upon the
 Common Law Courts.

By 8 & 9 Vict. c. 109, § 19, the proceedings by way of
 feigned issues were abolished.

23 & 24 VICT. c. 126 (O. L. P. Act, 1860).

§ 12. Where an action has been commenced in respect of Interplea-
 a common law claim for the recovery of money or goods, or der may be
 where goods or chattels have been taken or are intended to granted,
 be taken in execution under process issued from any one of though
 the Superior Courts, or from the Court of Common Pleas at titles have
 Lancaster or the Court of Pleas at Durham, and the defen- not a com-
 dant in such action, or the sheriff or other officer, has applied monorigin.
 for relief under the provisions of an Act made and passed in

1 & 2 Wm.
IV. c. 58.

the session of Parliament held in the first and second year of the reign of his late Majesty King William the Fourth, intituled "An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claim," it shall be lawful for the Court or a judge to whom such application is made to exercise all the powers and authorities given to them by this Act and the hereinbefore-mentioned Act passed in the session of Parliament held in the first and second years of the reign of his late Majesty King William the Fourth, though the titles of the claimants to the money, goods or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another.

Court or
judge may
direct sale
of goods
seized in
execution.

§ 13. When goods or chattels have been seized in execution by a sheriff or other officer under process of the above-mentioned Courts, and some third person claims to be entitled, under a bill of sale or otherwise, to such goods or chattels, by way of a security for a debt, the Court or a judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt or otherwise as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or judge may seem just.

Power to
Court or
judge to
decide
summarily
in certain
cases.

§ 14. Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or judge wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

Special
case may

§ 15. In all cases of interpleader proceedings where the

question is one of law, and the facts are not in dispute, the judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the Court.

§ 16. The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under "The C. L. P. Act, 1852"; and error may be brought upon such case; and the provisions of "The C. L. P. Act, 1854," as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act.

§ 17. The judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner shall be final and conclusive against the parties and all persons claiming by, from, or under them.

§ 18. All rules, orders, matters, and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and, to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the Superior Courts of Common Law.

RULES OF S. C. 1875.

Order I, Rule 2. With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts, 1 & 2 Will. IV. c. 58, and 23 & 24 Vict. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

APPENDIX C.



FORMS IN STAKEHOLDER'S INTERPLEADER.

FORM 1.

INTERPLEADER SUMMONS BY STAKEHOLDER.

In the High Court of Justice,

Division.

18 . No. .

Between Plaintiff,

and

. Defendant,
Claimant.

Let all parties concerned attend the Master in Chambers on day, the day of , 18 , at o'clock in the noon, on the hearing of an application on the part of that the plaintiff and the claimant appear and state the nature and particulars of their respective claims to the monies the subject-matter of this action, and maintain or relinquish the same; and that it be referred to one of the masters to tax the defendant's costs of this action; and that such costs when taxed be paid to the defendant out of the said subject-matter of this action; and that all further proceedings in this action be stayed, and that the said claimant be restrained from commencing any proceedings against the defendant in respect of the subject-matter of this action, and that such other order may be made herein as may be deemed fit.

Dated the day of , 18 .

This summons was taken out by of , solicitor for .

To *A. B.* the said plaintiff, and to *E. F.* the said claimant.

APPENDIX C.

171

FORM 2.

DEFENDANT'S AFFIDAVIT IN SUPPORT OF HIS SUMMONS.

In the High Court of Justice,

Division.

1880, A. No. 100.

Between Plaintiff,

and

. Defendant.

I, , of [here insert address], the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the day of , 1880, and was served on me on the day of , 1880. I have not yet delivered a statement of defence herein.

2. The action is brought to recover .

The said* in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed† by one , who‡ .

4. I do not in any manner collude with the said , or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn at , the day of , 1880.

Before me .

This affidavit is filed on behalf of the .

FORM 3.

AFFIDAVIT BY CLAIMANT IN SUPPORT OF HIS CLAIM.

[Title, &c. as in Form 2.]

I, E. F., of , make oath and say as follows:—

1. I have read the affidavit of the defendant sworn in this

* "Is" or "are."

† If claim in writing make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

INTERPLEADER.

action on , and I say that the therein mentioned is my property and I claim it as such.

2. [*Here state briefly the nature of the claimant's claim to the property.*]

Sworn [*&c., as at end of Form 2*].

FORM 4.

AFFIDAVIT OF SERVICE OF SUMMONS.

In the High Court of Justice,
Division.

Between *A. B.*, Plaintiff,
and
C. D., Defendant,
and
E. F., Claimant.

I, , of , solicitor for the above-named ,
make oath and say as follows :—

I did on the day of , 1880, before the hour of
in the noon, serve the claimant *E. F.* in this
action with a true copy duly stamped of the summons hereto
annexed, marked *A.*, by leaving it at the of the said
E. F., situate , with there. [*If the summons be
served personally on the claimant, state it so.*]

Sworn [*&c., as at end of Form 2*].

FORM 5.

ORDER DISMISSING DEFENDANT'S APPLICATION FOR INTER-
PLEADER.

In the High Court of Justice,
 Division. 1880 A., No. 100.
 , Master in Chambers.

Between *A. B.*, Plaintiff,
 and
C. D., Defendant,
 and
E. F., Claimant.

Upon hearing , and upon reading the affidavit of
 , filed the day of , 1880, and .

It is ordered that the application of be dismissed*
 with costs to be taxed and paid by the to the [or,
 that the costs of and occasioned by this application be the
 in any event].

Dated the day of , 1880.

FORM 6.

ORDER BARRING THE CLAIMANT.

In the High Court of Justice,
 Division. 1880, A. No. 100.
 , Master in Chambers.

Between Plaintiff,
 and
 Defendant,
 and
 Claimant.

Upon hearing , and upon reading the affidavit of
 , filed the day of , 1880, and .

* If the dismissal be with costs, add these words.

INTERPLEADER.

It is ordered that the claimant be barred, that no further proceedings be taken in the action by the above-named plaintiff, against the above-named defendant, that the monies [*describe subject-matter of litigation*] be paid over by the above-named defendant to the above-named plaintiff, and that the costs of this application be .

Dated the day of , 18 .

 FORM 7.

 ORDER SUBSTITUTING CLAIMANT AS DEFENDANT IN THE
ACTION.

In the High Court of Justice,

Division.

18 , No. .

, Master in Chambers.

Between Plaintiff,

and

Defendant,

and

Claimant.

Upon hearing , and upon reading the affidavit of ,
filed on the day of , 18 , and .

It is ordered that the above-named claimant be substituted
as defendant in this action, in lieu of the present defendant,
and that the costs of this application be .

Dated the day of , 18 .

FORM 8.

ORDER DIRECTING ISSUE BETWEEN PLAINTIFF AND
CLAIMANT.

[Title as in Form 7.]

Upon hearing , and upon reading the affidavit of ,
filed on the day of , 18 , and .

It is ordered that all further proceedings in this action
against the defendant be stayed, and that the said plaintiff
and the said [claimant] be restrained from proceeding
against the said defendant to recover the for which this
action is brought.

And it is further ordered that the said defendant do retain
possession of the until further order [or, forthwith pay
into the hands of one of the Masters of this Court the said
£].

And it is further ordered that the plaintiff and the said
, claimant, proceed to the trial of an issue in the High
Court of Justice, in which the plaintiff shall be plaintiff and
the [claimant] defendant, and that the question to be
tried shall be whether [here state the question at issue].

And it is further ordered that this issue be prepared and
delivered by the plaintiff therein within from this date,
and be returned by the defendant therein within days,
and be tried at .

And it is further ordered that the question of costs, and all
further questions, be reserved until after the trial of the said
issue.

Dated the day of , 18 .

INTERPLEADER.

FORM 9.

ORDER SUMMARILY DETERMINING THE MATTER.

In the High Court of Justice,
 Division. 18 . No. .
 , Master in Chambers.
 Between Plaintiff,
 and
 Defendant,
 and
 Claimant.

The plaintiff and the claimant having requested and consented that the merits of their claims be disposed of and determined in a summary manner, now upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that .

And that the costs of this application be .

Dated the day of , 18 .

FORM 10.

FORM OF ISSUE.

See the form of issue in sheriff's interpleader [*post*, *Form 10, in Appendix D.*]. With the slight necessary alterations, that form is equally available for an issue in stakeholder's interpleader.

FORM 11.

ORDER DIRECTING SPECIAL CASE.

[Heading as in Form 7.]

Upon hearing , and upon reading the affidavit of , filed on the day of , 18 , and .

It is ordered that all further proceedings in this action against the defendant be stayed, and that the said , the plaintiff, and the said , the claimant, be restrained from proceeding against the said defendant to recover the for which this action is brought.

And it is further ordered that the said , the defendant, do retain possession of the until further order [or, forthwith pay into the hands of one of the Masters of this Court the said].

And it is further ordered that the question as to the right to the said goods [or, monies], as between the plaintiff and the claimant, be tried by means of a special case to be agreed upon between the said plaintiff and the said claimant, such special case to be prepared by the plaintiff and submitted to the said claimant or his solicitor within days, and returned approved by the said claimant within days.

And that any question that may arise as to the form of such case be submitted to, and determined by, the Master sitting at Chambers.

And it is further ordered that the question of costs and all further questions be reserved until after the hearing of the said special case.

Dated the day of , 18 .

INTERPLEADER.

FORM 12.

FIERI FACILAS ON ORDER FOR COSTS.

In the High Court of Justice,						18 . No. .
Division.						
Between	.	.	.	.	.	Plaintiff,
			and			
	.	.	.	.	.	Defendant,
			and			
.	.	.	.	.	.	Claimant.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of _____, greeting: We command you that of the goods and chattels of _____, in your bailiwick, you cause to be made the sum of £ _____, for certain costs which by an order of our High Court of Justice, dated the _____ day of _____, 18 _____, were ordered to be paid by the said _____ to _____, and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of £4 per centum per annum, from the _____ day of _____, 18 _____, and that you have the said sum and interest before us in our said Court, immediately after the execution hereof, to be rendered to the said _____. And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, Hugh McCalmont, Earl Cairns, Lord High Chancellor of Great Britain, the day of , 18 .

Levy £ , and £ for costs of execution, &c., and also interest on £ at £4 per centum per annum from the day of , 18 , until payment, besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by _____, of _____, agent for _____, of _____, solicitor for the _____.

The is a , and resides at , in your bailiwick.

FORM 13.

PARTICULARS TO BE DELIVERED BY CLAIMANT WHEN INTER-
PLEADER TRANSFERRED FROM THE HIGH COURT.

In the County Court of , holden at .
Between *A. B.*

[*Address and description*]
and

E. F.

[*Address and description*].

The following are the names and addresses of the parties and solicitors to the interpleader proceedings directed to be transferred to this Court by order dated :

viz.:—of the claimant, *A. B.*, of [*address and description*];
of his solicitor, *C. D.*, of [*address and description*];
of the execution creditor, *E. F.*, of [*address and description*];
of his solicitor, *G. H.*, of [*address and description*].

The proceeding transferred is an issue to try whether certain goods seized by the sheriff of Middlesex, under an execution from the High Court, in an action in which the said *E. F.* was plaintiff and *J. K.* defendant, are the property of the said *A. B.*, the claimant, or of the said *E. F.*, the execution creditor.

I request that the said issue may be entered for hearing.

[*Claimant.*]

To the Registrar.

APPENDIX D.

FORMS IN SHERIFF'S INTERPLEADER.

FORM 1.

SHERIFF'S INTERPLEADER SUMMONS.

In the High Court of Justice,
 Division. 18 . No. .
 , Master in Chambers.

Between Plaintiff,
 and
 Defendant,
 and
 Claimant.

Let all parties concerned attend the Master in Chambers on
 day, the day of , 18 , at o'clock in
 the noon, on the hearing of an application on the part
 of the sheriff of that the plaintiff and the claimant
 appear and state the nature and particulars of their respective
 claims to the goods and chattels seized by the above-named
 sheriff , under the writ of *fieri facias* issued in this
 action, and maintain or relinquish the same and abide by
 such order as may be made herein, and that in the meantime
 all further proceedings be stayed.

Dated the day of , 18 .

This summons was taken out by , of , solicitor
 for .

To [the plaintiff], and [the claimant or claimants].

FORM 2.

SHERIFF'S AFFIDAVIT IN SUPPORT OF SUMMONS.

In the High Court of Justice,
Division.

18 . No. .

Between Plaintiff,
and
. Defendant,
. Claimant.

I, of , officer to the sheriff of , make oath
and say as follows:

1. On the day of last, I took possession of certain goods and chattels in the house of the above-named defendant, situate at , in the county of , under a writ of *fiery facias* issued out of the above-named Division of the High Court in this action, directed to the said sheriff, and commanding him to cause to be levied of the goods and chattels of the above-named defendant £ , and interest thereon, which sums the above-named plaintiff had recovered in this action against the said defendant, and endorsed to levy the whole besides sheriff's poundage, officers' fees, and other expenses of execution, and also by virtue of a warrant of the said sheriff granted on the said writ and to me directed, I still remain in possession of the said goods and chattels as such sheriff's officer.

2. On the day of , I was served with a written notice, of which the following is a copy [*here copy the claimant's notice. If notice not in writing state its effect shortly but accurately*].

3. I make this application solely on my own behalf as officer to the said sheriff, and at my own expense and for my own indemnity. Neither the said sheriff nor myself in any way collude with the said claimant or the said plaintiff.

Sworn [*&c., as in Form 2 in Appendix C.*].

INTERPLEADER.

FORM 3.

For form of claimant's affidavit, see Form 3 in Appendix C.

FORMS 4 AND 5.

For forms of order dismissing the sheriff's application, or summarily deciding by consent or otherwise, see Forms 5 and 9 in Appendix C.

FORM 6.

ORDER BARRING CLAMANT.

**In the High Court of Justice,
Division.**

in Chambers.

Between Plaintiff, and Defendant,
and

Between Claimant, and Respondent.

Upon hearing _____, and upon reading the affidavit of _____, filed the _____ day of _____, 18____, and _____.

It is ordered that the claimant be barred, and that no action be brought against the above-named sheriff, and that the costs of this application be _____.

Dated the day of , 18 .

FORM 7.

ORDER FOR SHERIFF TO WITHDRAW.

In the High Court of Justice,
Queen's Bench Division.

Master , Master in Chambers.

Between Plaintiff,
and
. Defendant,
. Claimant.

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of , and reading the affidavit of .

It is ordered that the sheriff withdraw from possession of the goods seized by him under the writ of *fiat facias* herein and claimed by the claimant, that no action be brought.

And that the pay to the the costs of the interpleader to be taxed, and possession money to the sheriff.

Dated the day of , 189 .

FORM 8.

ORDER DIRECTING ISSUE.

In the High Court of Justice,
Division.

18 . No. .

Master in Chambers.

Between Plaintiff,
and
. Defendant,
and between
. Claimant,
and the said , execution creditor, and
the sheriff of Respondents.

Upon hearing , and upon reading the affidavit of
, filed the day of , 18 , and .

INTERPLEADER.

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *feri facias* issued herein and claimed by the claimant, and pay the net proceeds of the sale, after deducting the expense thereof, into Court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff, and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at .

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 18 .

FORM 9.

ANOTHER ORDER DIRECTING ISSUE.

• [Heading as in No. 6.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that upon payment of the sum of £ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the Master [or as the case may be] for the payment of the same amount by the said claimant, according to the directions of any order to be made herein, and upon payment

to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *feri facias* herein and claimed by the claimant.

And it is further ordered that unless such payment be made or security given within the time aforesaid, the said sheriff proceed to sell the said goods and pay the proceeds of the sale, after deducting the expenses thereof, and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of , 18 .

FORM 10.

ANOTHER ORDER DIRECTING AN ISSUE.

[*Heading as in Form 6.*]

Upon hearing , and upon reading the affidavit of ,
filed the day of , 18 , and .

It is ordered that upon payment of the sum of £ into Court by the said claimant, or upon his giving security to the satisfaction of the Master [*or as the case may be*] for the payment of the same amount by the claimant, according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *feri facias* issued herein.

And it is further ordered that in the meantime and until such payment made or security given the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money

INTERPLEADER.

from this date, into Court in this cause to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of , 18 .

FORM 11.

INTERPLEADER ISSUE.*

**In the High Court of Justice,
Division.**

Between Plaintiff,
 and
. . . . Defendant.

Interpleader issue.

Delivered the day of , by , solicitor for the
above-named plaintiffs, pursuant to an interpleader order of
[the Honourable Mr. Justice], dated .

The plaintiff, *A. B.*, affirms, and the defendant, *C. D.*, denies, that the goods [*here describe them*] seized, on the day of , in execution by the sheriff of , under a writ of *feri facias* tested the day of , and issued out of the Division of Her Majesty's High Court of Justice, directed to the said sheriff for the having of execution of a judgment of that Court, recovered by the said *A. B.* in an action at his suit against *M. N.* were, or some part thereof was, at the time of the said seizure, the property of the said *A. B.* as against the said *C. D.*

And it has been ordered by the Honourable Mr. Justice
 , [or, by Master Smith], that the said question shall
 be tried by a jury, and that the said matter should be tried
 at .

Therefore let a jury come, &c.

* This form of issue can with slight variations be applied to the case of an issue in interpleader at the suit of an ordinary person, as well as at that of a sheriff.

FORM 12.

ORDER DIRECTING SPECIAL CASES.

[Heading as in No. 6.]

[The order will first deal with the interim disposition of the property in dispute, and any one of the courses adopted respectively in the previous forms may be here adopted. The order will then proceed thus :—]

And it is further ordered that the question as to the right to the said goods [or, monies], as between the claimant and the plaintiff, be tried by means of a special case, to be agreed upon between the said claimant and the said plaintiff, such special case to be prepared by the claimant and submitted to the said plaintiff, within days, and returned approved by the said plaintiff within days. And that any question that may arise as to the form of such case be submitted to and determined by the Master sitting at Chambers.

And it is further ordered that the question of costs and all further questions be reserved until after the hearing of the said special case and that no action be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 18 .

FORM 13.

ORDER SUMMARILY DISPOSING THE MATTER UNDER RULE 12 OF ORDER LVII.

[Heading as in No. 6.]

Upon hearing , and upon reading the affidavit of , filed the day of , 18 , and .

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fiery facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof and rent, if any) the said sheriff pay to the claimant the amount of his

INTERPLEADER.

said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be .

Dated the day of , 18 . .

FORM 14.

ORDER REMITTING TO COUNTY COURT.

[*Heading as in No. 6.*]

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of , and upon reading the affidavit of .

It is ordered that, upon payment of the sum of £ and possession money from the date of this order to the said sheriff by the said claimant within seven days from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *fiery facias* herein and claimed by the claimant.

And it is further ordered that unless such payment be made within the time aforesaid the said sheriff proceed to sell the said goods and retain the proceeds of the sale after deducting the expenses thereof and the possession money from this date.

And it is further ordered that the said sum of £ , or the proceeds of the said sale (as the case may be) do abide the order of the judge of the County Court to whom the interpleader proceedings herein are hereinafter ordered to be transferred.

And it is further ordered that the interpleader proceedings herein be transferred to the County Court of holden at .

And it is further ordered that the costs of this application be costs in the interpleader proceedings, and that no action be brought against the said sheriff for the seizure of the said goods.

Dated the day of , 18 .

FORM 15.

For the *form of an Interpleader Bond*, the usual security required from the claimant, when he does not wish the goods seized to be sold, and wishes the sheriff to withdraw from possession of them, see Chitty's Forms (11th edition), p. 677.

For the forms in use in the like proceedings in the Chancery Division, which are similar to, but somewhat more full than those in use at Common Law, see "Seton on Decrees," vol. i. p. 436 (5th edition), and "Pemberton on Judgments," p. 218 (4th edition).

FORM 16.

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION.

Take notice that *A. B.* has claimed the goods (*or, certain goods*) [*where only certain goods are claimed, here enumerate them*] taken in execution by the sheriff of _____, under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said *A. B.* to the said goods, and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said *A. B.* to the said goods, and give notice thereof in manner aforesaid to the said sheriff, you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed) Sheriff of _____.

To the plaintiff. _____

FORM 17.

NOTICE BY PLAINTIFF OF ADMISSION OR DISPUTE OF
TITLE OF CLAIMANT.

Take notice that I admit (*or dispute*) the title of *A. B.* to the goods [*or, to certain of the goods, namely (set them out)*] seized by you under the execution issued under the judgment in this action.

(Signed) Plaintiff, or Solicitor.

To the Sheriff and his officers.

APPENDIX E.

FORMS IN INTERPLEADER IN COUNTY COURTS.

FORM 1.

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION.

*Order 27,
Rule 1.*

Take notice that *A. B.* has claimed the goods [or, certain goods] [*where only certain goods are claimed here enumerate them*] taken in execution by me under the warrant of execution issued in this action. If you admit the title of the said *A. B.* to the said goods, and give notice thereof to me by return of post, you will not be liable for any costs incurred after the receipt by me of your notice.

Dated, &c.

High Bailiff.

To the Plaintiff.

FORM 2.

NOTICE BY PLAINTIFF OF ADMISSION OF TITLE OF CLAIMANT.

*Order 27,
Rule 1.*

Take notice that I admit the title of *A. B.* to the goods seized by you under the execution issued under the judgment in this action.

Plaintiff.

To the High Bailiff.

FORM 3.

NOTICE TO CLAIMANT SETTING UP A CLAIM TO GOODS TAKEN
IN EXECUTION TO MAKE DEPOSIT OR GIVE SECURITY.

[Heading as in No. 6.].

Whereas you, A. B., have claimed the goods [*or, certain* 51 & 52
goods] [*where only certain goods are claimed here enumerate* Vict. c. 43,
them] taken in execution by me under the warrant of s. 156.
execution issued in this action: Order 27,
Rule 1a.

Take notice that you are hereby required, in accordance
with section 156 of the County Courts Act, 1888, either—

- (1) to deposit with me the amount of the value of the goods
so claimed by you, such value to be fixed by appraise-
ment in case of dispute, to be by me paid into Court
to abide the decision of the judge, upon your claim;
or
- (2) to deposit with me the costs of keeping possession of
such goods until such decision can be obtained; *or*
- (3) to give me security by bond with sureties according
to section 108 of the County Courts Act, 1888, and
Order 29 of the County Court Rules, 1889, for the
value of the goods so claimed by you;

and further take notice, that in default of your making
deposit or giving security the goods will be sold as if no
such claim had been made by you, and the proceeds paid
into Court to abide the decision of the judge.

High Bailiff.

To .

FORM 4.

PARTICULARS OF CLAIM UNDER INTERPLEADER SUMMONS.

In the County Court of _____, holden at _____
No. of Plaint. _____

Between *A. B.* Plaintiff,
and
C. D. Defendant.

**Order 27,
Rule 4a.**

Take notice, that I, *E. F.*, of [20, Elizabeth Terrace, Islington, in the county of Middlesex, dealer in furniture], claim certain goods and chattels, to wit [*or*, specified in the schedule hereunder written] taken in execution under process issuing out of this Court in this action, and mentioned in the interpleader summons, and that the grounds of my claim are that the said goods were assigned to me by an indenture dated the [28th day of May, 1850], and made between the said *C. D.*, the defendant, of the one part, and me, the said *E. F.*, the claimant, of the other part.

And further take notice that I claim the sum of £20 from the said *A. B.*, the plaintiff and the high bailiff, for damages arising out of the said execution. And that the grounds of my claim are that they broke and entered my said house at Islington aforesaid, and that they there seized and took away the said goods and chattels under the said execution.

Dated, &c.

(Signed) *E. F.*, Claimant.

To the execution creditor, and the
high bailiff of this Court.

PARTICULARS OF CLAIM FOR RENT UNDER INTERPLEADER
SUMMONS.

Take notice, that *C. D.*, the defendant, is my tenant of *Order 27,*
[a certain house and premises] situate at _____ in the county *Rule 4a.*
of _____, and that the goods and chattels taken in execution
under process issuing out of this Court in this action, and
mentioned in the interpleader summons, were in and upon
the said [house and premises], and that there was at the date
of the said execution due to me from the said *C. D.* the sum
of £ _____ for [one year's] rent of the said [house and premises],
and that the same is still due and owing from the said *C. D.*
to me, and that I claim payment of the said sum of £ _____
out of the proceeds of the said execution.

(Signed) *E. F.* [*name, address, and description*].

To the execution creditor, and the
high bailiff of this Court.

INTERPLEADER SUMMONS TO EXECUTION CREDITOR.

In the County Court of					, holden at					.				
										No. of Plaintiff.				
Between <i>A. B.</i>					.					Plaintiff,				
					and									
<i>C. D.</i>					.					Defendant,				
					and									
<i>E. F.</i>					.					Claimant.				

Whereas [here insert the name, address and description of claimant, so far as is then known] hath made a claim to

INTERPLEADER.

certain goods and chattels [*or, the proceeds of sale [or, value] of certain goods and chattels*] taken in execution under process issuing out of this Court at your instance, [*or, certain rent alleged to be due to him in respect of and issuing out of the premises upon which certain goods and chattels were taken in execution under process issuing out of this Court at your instance*]:

You are therefore hereby summoned to appear at a Court to be holden at , on the day of , 18 , at the hour of in the noon, when the said claim will be adjudicated upon, and such order made thereupon as to the Court shall seem fit.

Dated this day of , 18 .

Registrar of the Court.

To the execution creditor.

NOTE.—The claimant is called upon five clear days at least before the day of hearing to deliver to the high bailiff, or leave at the office of the Registrar, two copies of the particulars of his claim, and the high bailiff is required to forthwith send by post to you or your solicitor one of the copies of such particulars.

FORM 7.

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A
CLAIM TO THE GOODS OR THE PROCEEDS THEREOF.

[*Same heading as No. 6.*]

[*Name, address and description of claimant*], you are hereby summoned to appear at a Court to be holden at , on the day of , 18 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or, to the proceeds of sale [or, value] of certain goods and chattels*] taken in execution under process issuing

out of this Court at the instance of [*the execution creditor*]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over [*or, the said proceeds of sale [or, value] will be paid over*] according to the exigency of the said process; and take notice that you are hereby required, five clear days at least before the said day, to deliver to the high bailiff, or leave at my office, two copies of the particulars of the goods and chattels which [*or, the proceeds [or, value] whereof*] are claimed by you, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid, your claim will not be heard by the Court.

To [*the claimant above named*].

FORM 8.

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A
CLAIM TO RENT IN RESPECT OF THE PREMISES UPON
WHICH THE EXECUTION WAS LEVIED.

[*Same heading as No. 6.*]

[*Name, address and description of claimant*], you are hereby summoned to appear at a Court to be holden at _____, on the _____ day of _____, 18____, at the hour of _____ in the noon, to support a claim made by you to certain rent alleged by you to be due to you in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process issuing out of this Court at the instance of [*the execution creditor*]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over according to the exigency of the said process [*or, if such goods and chattels*

INTERPLEADER.

shall have been then sold or the value thereof deposited in Court, then the proceeds of such sale or the amount deposited will be paid over according to the exigency of the said process]; and take notice, that you are hereby required, five clear days at least before the said day, to deliver to the high bailiff, or leave at my office, two copies of the particulars of the amount of the rent claimed by you, and of the period for which and of the premises in respect of which you claim such rent, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid, your claim will not be heard by the Court.

To [the claimant above named].

FORM 9.

INTERPLEADER SUMMONS TO AN EXECUTION CREDITOR,
AND TO THE HIGH BAILIFF, WHERE CLAIMANT CLAIMS
DAMAGES AS WELL AS THE GOODS SEIZED.

In the County Court of _____, holden at _____.
No. of Plaintiff.
Between A. B. Plaintiff,
and
C. D. Defendant,
and between
E. F. Claimant,
and
[the execution creditor] and the
high bailiff of this Court . Respondents.

Whereas [name, address, and description of claimant] hath made a claim to certain goods and chattels [or, to the pro-

ceeds of sale [*or value*] of certain goods and chattels] taken in execution under process issuing out of this Court at your instance, and hath also claimed from you and from the high bailiff of this Court the sum of £ for damages arising out of the said execution :

You and the high bailiff are therefore hereby summoned to appear at a Court to be holden at , on the day of , 18 , at the hour of in the noon, when the said claim, both as to the said goods and chattels [*or, the proceeds of sale [*or, value*] of the goods and chattels*], and as to the said damages, will be adjudicated upon, and such order made thereupon as to the Court shall seem fit.

To [*the execution creditor*] and to the
high bailiff of this Court.

NOTE.—The claimant is called upon five clear days at least before the day of hearing to deliver to the high bailiff, or leave at the office of the registrar, two copies of the particulars of his claim, and the high bailiff is required to forthwith send by post to the execution creditor or his solicitor one of the copies of such particulars.

FORM 10.

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM TO DAMAGES, AS WELL AS TO THE GOODS OR THE PROCEEDS THEREOF.

[*Same heading as No. 9.*]

[*Name, address, and description of claimant*], you are hereby summoned to appear at a Court to be holden at , on the day of , 18 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or, to the proceeds of sale [*or, value*] of certain goods and chattels*] taken in execution under process issuing

INTERPLEADER.

out of this Court at the instance of [*the execution creditor*], and also for damages arising out of such execution, and, in default of your then establishing such claim, the said goods and chattels will then be sold and the proceeds paid over [*or, the said proceeds [or value] will be paid over*], according to the exigency of the said process; and take notice that you are hereby required five clear days at least before the said day to deliver to the high bailiff, or leave at my office, two copies of the particulars of the goods and chattels which [*or, the proceeds [or, value] whereof*] are claimed by you, and of the grounds of your claim, and you must also state in such particulars the amount of the damages you claim, and the party from whom you claim the same, and the grounds of your claim; and in such particulars you shall set forth fully your name, address and description; and take notice, that in the event of your not giving such particulars as aforesaid your claim will not be heard by the Court.

To [*the claimant above named*].

FORM 11.

ORDER ON AN INTERPLEADER SUMMONS WHERE THE CLAIM
IS NOT ESTABLISHED.

In the County Court of		, holden at	.
			No. of Plaint.
Between A. B.	.	.	Plaintiff,
		and	
C. D.	.	.	Defendant,
		and	
E. F.	.	.	Claimant.

It is this day adjudged touching the claim of *E. F.* to certain goods and chattels [*or, the proceeds of sale [or, value] of certain goods and chattels*] taken in execution under process issuing out of this Court at the instance of

[*the execution creditor*], [or, to certain rent alleged to be due to him in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process issuing out of this Court at the instance of the said [*execution creditor*],] that the said goods and chattels [or, proceeds of sale] [or, value] are not the property of the said *E. F.* [or, that there is no rent due to the said *E. F.*].

And it is ordered, that the said *E. F.* do pay the sum of £ for costs to the registrar of this Court, for the use of the said [*execution creditor*], on or before the day of , 18 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any monies paid into Court, or, in the case of an interpleader transferred from the High Court, any monies in the hands of the sheriff are to be disposed of, and an order on the sheriff to deal with such monies accordingly; for example, thus—*

And it is ordered that the said *E. F.* do on or before Hearing the day of pay the sum of £ , being the fee ^{fee.} payable on the hearing of this proceeding estimated on the sum of £ , to the registrar of this Court:

And it is ordered that out of the sum of £ paid into Disposal of Court in this proceeding by the high bailiff, being the value deposit or of the said goods and chattels deposited by the said *E. F.* ^{proceeds of sale.} with the said high bailiff [or, being the proceeds of the sale by the said high bailiff of the said goods and chattels] the sum of £ be paid to the said high bailiff for possession money and charges in respect of the said execution, and that the balance of the said sum of £ be paid to the said [*execution creditor*] in satisfaction, so far as the same will extend, of the sum in respect of which the said execution issued:

[Or, where security given for value of goods:

And it is ordered that the said *E. F.* do on or before the Where security given for

value of
goods.

day of pay to the registrar of this Court the sum of £ , being the value of the said goods and chattels, and that in default of such payment the high bailiff do proceed to enforce the security given by the said *E. F.* for such value :

And it is ordered that all monies paid by the said *E. F.* in respect of the said sum of £ , or recovered by the enforcement of the said security, be applied first in payment to the high bailiff of the possession money and charges payable to him in respect of the said execution, and then in payment to the said [*execution creditor*], so far as the same will extend, of the sum in respect of which the said execution issued.]

Inter-
pleader
transferred
from
High
Court.

[*Or, in the case of an interpleader transferred from the High Court :*

And it is ordered that the sheriff of do forthwith, after service of this order upon him, pay to the said [*execution creditor*] the sum of £ paid to the said sheriff by the said *E. F.* pursuant to the order of Master dated

Disposal of
monies in
hands of
sheriff.

the day of , 18 , [*or, the monies in the hands of the said sheriff, representing the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the order of Master dated the day of , 18*], after deducting from the said sum [*or, monies*] the costs of the said sheriff of the said execution :

Costs of
sheriff.

And it is further ordered that the said *E. F.* do pay to the said sheriff his costs of this proceeding down to and including the order directing this proceeding to be transferred to this Court, such costs in case of dispute to be taxed by the registrar, and paid by the said *E. F.* to the registrar for the use of the sheriff within days from the date of the certificate of taxation.]

To [*the claimant*]

and the high bailiff

[*or, the sheriff of*].

FORM 12.

ORDER ON AN INTERPLEADER SUMMONS WHERE THE CLAIM
IS ESTABLISHED.

[Same heading as No. 11.]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or*, the proceeds of sale [*or*, value] of certain goods and chattels] taken in execution under process issuing out of this Court at the instance of the said [*execution creditor*], [*or*, to certain rent alleged to be due to him in respect of and issuing out of certain premises on which certain goods and chattels were taken in execution under process issuing out of this Court at the instance of the said [*execution creditor*],] that the said goods and chattels [*or*, proceeds of sale [*or*, value] or part thereof, to wit, *specifying them or it*] are the property of the said *E. F.* [*or*, that rent to the amount of £ is due to the said *E. F.*].

And it is ordered, that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , 18 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any monies paid into Court, or, in the case of an interpleader transferred from the High Court, any monies in the hands of the sheriff, are to be disposed of, and an order on the sheriff to deal with such monies accordingly: for example, thus—*

And it is ordered that the said [*execution creditor*] do, on Hearing or before the day of , 18 , pay the sum of , fee. being the fee payable on the hearing of this proceeding, estimated on the sum of £ , to the registrar of this Court:

And it is ordered that the sum of £ paid into Court Disposal of deposit or

proceeds of in this proceeding by the high bailiff, being the value of the sale.

said goods and chattels deposited by the said *E. F.* with the said high bailiff [*or*, being the proceeds of the sale by the said high bailiff of the said goods and chattels] be paid to the said *E. F.* :

[*Or, where security given for value of goods :*

Where security given for value of goods.

And it is ordered that the security given by the said *E. F.* for the value of the said goods and chattels be delivered up to the said *E. F.* to be cancelled:]

[*Or, where the costs of keeping possession of the goods have been deposited with the high bailiff :*

Where costs of keeping possession deposited.

And it is ordered that the sum of £ deposited by the said *E. F.* with the said high bailiff for the costs of keeping possession of the said goods and chattels be forthwith repaid by the said high bailiff to the said *E. F.* :]

High bailiff's possession money and charges.

And it is ordered that the said [*execution creditor*] do, on or before the day of , 18 , pay to the registrar for the use of the high bailiff the sum of £ for possession money and charges in respect of the said execution.

Interpleader transferred from High Court.

[*Or, in the case of an interpleader transferred from the High Court :*

And it is ordered that the sheriff of do forthwith after the service of this order upon him pay to the said *E. F.* the sum of £ paid to the said sheriff by the said *E. F.* pursuant to the order of Master , dated the

Disposal of monies in hands of sheriff.

day of , 18 [*or*, the monies in the hands of the said sheriff representing the proceeds of the sale of the said goods and chattels by the said sheriff pursuant to the order of Master , dated the day of , 18 :]

Possession money since date of Master's order.

And it is ordered that the said [*execution creditor*] do, on or before the day of , 18 , pay to the registrar for the use of the said *E. F.* the sum [*if any*] paid by the said *E. F.* to the said sheriff for possession money from the date of the order of the said Master :

And it is ordered that the said [*execution creditor*] do pay

INTERPLEADER.

execution creditor] and the high bailiff of this Court, that the said goods and chattels [*or, proceeds of sale*] [*or, value*] are not the property of the said *E. F.*, and that the said *E. F.* is not entitled to recover any damages from either [*the execution creditor*] or the high bailiff of this Court :

And it is ordered that the said *E. F.* do pay to the registrar of this Court the sum of £ for costs for the use of the said [*execution creditor*], and the sum of £ for costs for the use of the high bailiff of this Court, on or before the day of , 18 .

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses ; also directions as to how any monies paid into Court are to be disposed of.*]

To [*the claimant*].

FORM 14.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO BOTH IS ESTABLISHED.

[*Same heading as No. 13.*]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or, the proceeds of sale*] [*or, value*] of certain goods and chattels] taken in execution under process issuing out of this Court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said *E. F.* claims against [*the execution creditor*] and the high bailiff of this Court, that the said goods and chattels [*or, proceeds of sale*] [*or, value*] or part thereof [*specifying them or it*] are the property of the said *E. F.*, and that the said *E. F.* is entitled to recover the

sum of £ for damages arising out of the said execution against the said [*execution creditor*] and the high bailiff of this Court :

[Or, that the said *E. F.* is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*], but is not entitled to recover any damages against the high bailiff of this Court :]

[Or, that the said *E. F.* is entitled to recover the sum of £ for damages arising out of the execution of the said high bailiff of this Court, but is not entitled to recover any damages against the said [*execution creditor*] :]

And it is ordered that the said [*execution creditor*] and the high bailiff of this Court do pay the sum of £ for damages, and the sum of £ for costs, to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , 18 .

[Or, that the said [*execution creditor*] do pay the sum of £ for damages, and the sum of £ for costs, to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , and that the said *E. F.* do pay the sum of £ for costs to the registrar of this Court, for the use of the high bailiff of this Court, on or before the day of , 18 .]

[Or, that the high bailiff of this Court do pay the said sum of £ for damages, and the sum of £ for costs, and that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of the Court, for the use of the said *E. F.*, on or before the day of , 18 .]

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses ; also directions as to how any monies paid into Court are to be disposed of.]

To [*the execution creditor*] and
the high bailiff.

INTERPLEADER.

FORM 15.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS
AND DAMAGES ARE CLAIMED, AND THE CLAIM TO THE
GOODS IS, BUT THAT TO DAMAGES IS NOT, ESTABLISHED.

[Same heading as No. 13.]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [or, the proceeds of sale [or, value] of certain goods and chattels] taken in execution under process issuing out of this Court at the instance of the said [execution creditor], and for damages arising out of the said execution, and which the said *E. F.* claims against [the execution creditor] and the high bailiff of this Court, that the said goods and chattels [or, proceeds of sale [or, value] or part thereof, specifying them or it] are the property of the said *E. F.*, but that the said *E. F.* is not entitled to recover any damages from either [the execution creditor] or the high bailiff of this Court :

And it is ordered that [the execution creditor] do pay to the registrar of this Court the sum of £ for costs, for use of the said *E. F.*, on or before the day of , 18 , and that the said *E. F.* do pay to the registrar of this Court the sum of £ for costs, for the use of the high bailiff of this Court on or before the day of , 18 .

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses ; also directions as to how any monies paid into Court are to be disposed of.]

To the [execution creditor] and
to *E. F.* [the claimant].

FORM 16.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO THE GOODS IS NOT, BUT THE CLAIM TO DAMAGES IS, ESTABLISHED.

[Same heading as No. 13.]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or*, the proceeds of sale [*or*, value] of certain goods and chattels] taken in execution under process issuing out of this Court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which the said *E. F.* claims against [*the execution creditor*] and the high bailiff of this Court, that the said goods and chattels [*or*, proceeds of sale] [*or*, value] are not the property of the said *E. F.*, but that the said *E. F.* is entitled to recover £ for damages arising out of the said execution against the said [*execution creditor*] and the high bailiff of this Court:

[*Or*, That the said *E. F.* is entitled to recover the sum of £ for damages arising out of the said execution against the said [*execution creditor*], but is not entitled to recover any damages against the high bailiff of this Court:]

[*Or*, That the said *E. F.* is entitled to recover the sum of £ for damages arising out of the said execution against the high bailiff of this Court, but is not entitled to recover any damages against the said [*execution creditor*]:]

And it is ordered that the said [*execution creditor*] and the high bailiff of this Court do pay the said sum of £ for damages, and the sum of £ for costs, to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , 18 :

[*Or*, That the said [*execution creditor*] do pay the sum of £ for damages, and the sum of £ for costs, to the registrar of this Court, for the use of the said *E. F.* on or before the day of , 18 , and that the said *E. F.*

INTERPLEADER.

do pay the sum of £ for costs to the registrar of this Court for the use of the high bailiff of this Court, on or before the day of , 18 :]

[Or, That the high bailiff of this Court do pay the said sum of £ for damages and the sum of £ for costs, to the registrar of this Court, for the use of the said *E. F.* on or before the day of , 18 , and that the said *E. F.* do pay the sum of £ for costs to the registrar of this Court, for the use of the said [*execution creditor*], on or before the day of , 18 :]

[*Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any monies paid into Court are to be disposed of.*]

To *E. F.* [*the claimant*],

and to [*execution creditor*],

and the high bailiff.

FORM 17.

CLAIM OF AN EXECUTION CREDITOR FOR DAMAGES FROM A HIGH BAILIFF.

Take notice that I the execution creditor claim the sum of £ from you the high bailiff of this Court, for damages arising out of a certain execution in this action, and that the grounds of my claim are as follows: [*here state the grounds of the claim, e.g., for that you, having seized certain goods and chattels of and belonging to the execution debtor, under process issued from this Court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution.*]

Dated this day of , 18 .

To the high bailiff
of this Court.

Execution creditor.

ORDER ON AN INTERPLEADER SUMMONS BY EXECUTION
CREDITOR AGAINST A HIGH BAILIFF WHERE THE CLAIM
TO DAMAGES IS ESTABLISHED.

To the high bailiff
of this Court.

INTERPLEADER.

FORM 19.

ORDER ON AN INTERPLEADER SUMMONS BY AN EXECUTION CREDITOR AGAINST A HIGH BAILIFF WHERE THE CLAIM TO DAMAGES IS NOT ESTABLISHED.

[*Same heading as No. 18.*]

It is this day adjudged, touching the claim of the execution creditor in this action, against the high bailiff of this Court, for damages arising out of an execution in this action in which process issued from this Court at the instance of the said the execution creditor, directing the said high bailiff of this Court to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said the execution creditor is not entitled to recover from the said high bailiff of this Court any damages in respect of or in any way arising from the said execution.

And it is ordered that the said the execution creditor do on or before the day of , 18 , pay to the registrar of this Court the sum of £ for costs, for the use of the said high bailiff of this Court.

To the execution creditor.

FORM 20.

ORDER ON INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED AND MONEY IS PAID INTO COURT IN RESPECT OF THE LATTER, AND THE CLAIM TO THE GOODS IS ESTABLISHED AND THE MONEY PAID INTO COURT IS FOUND TO BE SUFFICIENT TO SATISFY THE DAMAGES.

[*Same heading as No. 13.*]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or, the proceeds of sale* [*or*

value] of certain goods and chattels] taken in execution under process issuing out of this Court at the instance of the said [execution creditor], and for damages arising out of the said execution, and which the said *E. F.* claims against the said [execution creditor] and the high bailiff of this Court, and in respect of which damages the said [execution creditor] [or, the said high bailiff] hath paid into Court the sum of £ , that the said goods and chattels [or, proceeds of sale] [or, value] or part thereof [specifying them or it], are the property of the said *E. F.*, but that the said sum paid into Court is sufficient to satisfy all damages arising out of the said execution which the said *E. F.* is entitled to recover against the said [execution creditor] [or, the said high bailiff] (as the case may be).

And it is ordered that the said [execution creditor] do pay the sum of £ for costs to the registrar of this Court for the use of the said *E. F.*, on or before the day of , 18 . And that the said *E. F.* do pay the sum of £ for costs to the registrar of this Court, for the use of the high bailiff of this Court, on or before the day of , 18 [or such other order as the judge shall think fit to make as to costs].

[Here insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses ; also directions as to how any monies paid into Court are to be disposed of.]

To *E. F.* [the claimant],
and to [execution creditor],
and to the high bailiff.

INTERPLEADER.

FORM 21.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND MONEY IS PAID INTO COURT IN RESPECT OF THE LATTER, AND THE CLAIM TO THE GOODS IS ESTABLISHED, AND THE MONEY PAID INTO COURT IS ADJUDGED INSUFFICIENT.

[*Same heading as No. 13.*]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or, the proceeds of sale [or, value] of certain goods and chattels*] taken in execution under process issuing out of this Court at the instance of the said [*execution creditor*], and for damages arising out of the said execution, and which *E. F.* claims against the said [*execution creditor*] and the high bailiff of this Court, and in respect of which damages the said [*execution creditor*] [*or, the said high bailiff*] hath paid into Court the sum of £ , that the said goods and chattels [*or, proceeds of sale*] [*or, value*] or part thereof, [*specify them or it*] are the property of the said *E. F.*, and that the said sum of £ paid into Court is not sufficient to satisfy the damages arising out of the said execution, and that the said *E. F.* is entitled to recover the further sum of £ for damages against the said [*execution creditor*] and the high bailiff of this Court:

[*Or, That the said E. F. is entitled to recover the further sum of £ for damages against the said [execution creditor] but is not entitled to recover any further damages against the high bailiff of this Court:*

[*Or, That the said E. F. is entitled to recover the further sum of £ for damages against the high bailiff of this Court, but is not entitled to recover any further damages against the said [execution creditor]:*

And it is ordered that the said [*execution creditor*] and the high bailiff of this Court do pay the said further sum of

£ for damages and the sum of £ for costs to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , 18 :

[*Or*, That the said [*execution creditor*] do pay the said further sum of £ for damages, and the sum of £ for costs, to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , 18 , and that the said *E. F.* do pay the sum of £ for costs to the registrar of this Court, for the use of the high bailiff of this Court, on or before the day of , 18]:

[*Or*, That the high bailiff of this Court do pay the said further sum of £ for damages, and the sum of £ for costs, and that the said [*execution creditor*] do pay the sum of £ for costs to the registrar of this Court, for the use of the said *E. F.*, on or before the day of , 18 .]

[*Insert directions as to the payment of the hearing fee, and directions as to any claim for possession fees, or other charges or expenses; also directions as to how any monies paid into Court are to be disposed of.*]

To *E. F.* [*the claimant*],
and to [*execution creditor*],
and to the high bailiff.

FORM 22.

ORDER ON AN INTERPLEADER SUMMONS BY AN EXECUTION
CREDITOR AGAINST A HIGH BAILIFF FOR DAMAGES, AND
WHEN THE HIGH BAILIFF PAYS MONEY INTO COURT.

[*Same heading as No. 18.*]

*Order 27,
Rule 9.*

It is this day adjudged, touching the claim of the execution creditor in this action against the high bailiff of this Court for damages arising out of an execution in this action, in which process issued from this Court at the instance of the said execution creditor, directing the said high bailiff of this Court to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], and in respect of which damages the high bailiff hath paid into Court the sum of £ , that the sum paid into Court is sufficient to satisfy all damages arising out of the said execution [*or, that the sum paid into Court is not sufficient to satisfy the damages arising out of the said execution, and that the said , the execution creditor, is entitled to recover the further sum of £ for damages from the high bailiff.*]

And it is ordered that the said , the execution creditor, do pay to the registrar of this Court, on or before the day of , 18 , the sum of £ for costs, for the use of the high bailiff [*or, that the high bailiff do pay to the registrar of this Court, on or before the day of , 18 , the said further sum of £ for damages, and also the sum of £ for costs, for the use of , the execution creditor.*]

To , the execution creditor.

[*Or, to the high bailiff of this Court.*]

FORM 23.

WARRANT OF EXECUTION AGAINST THE GOODS OF CLAIMANT.

Whereas at a Court holden at _____, on the _____ day of _____, 18____, the plaintiff, by the judgment of the said Court, recovered against the defendant the sum of £ _____ for debt [or, damages] and for costs :

And whereas the defendant, by an order of the Court, was ordered to pay the same to the registrar of the Court :

And whereas default having been made in payment according to the said order, an execution issued against the goods of the defendant under which certain goods and chattels were seized, in respect of which *E. F.*, of, &c. made claim, and which claim was heard and decided upon at a Court held at _____, on the _____ day of _____, and it was adjudged that the goods so seized under the said execution were the property of the said *E. F.* [or, that certain rents alleged by the said *E. F.* to be due to him in respect of and issuing out of certain premises on which the said goods and chattels were seized were not so due] :

And it was ordered that the said *E. F.* should pay the sum of £ _____ for costs to the registrar of the Court, for the use of the said [plaintiff], on or before the _____ day of _____, 18____ :

And whereas default has been made in payment according to the said last-mentioned order :

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said *E. F.* wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said *E. F.* or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs

INTERPLEADER.

of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said *E. F.* which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of ,
18 .

By the Court,

Registrar of the Court.

To the high bailiff of the said Court,
and others the bailiffs thereof.

£ s. d.

Costs adjudged	.	.	.	.	.	.	.
Paid into Court	.	.	.	.	.	.	.
Remaining due	.	.	.	.	.	.	.
Poundage for issuing this warrant.	.	.	.	.	.	.	.

Total amount to be levied

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said *E. F.*

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of , 18 .

FORM 24.

AFFIDAVIT BY DEFENDANT SUED BY AN ASSIGNEE WHO HAS HAD NOTICE THAT THE ASSIGNMENT IS DISPUTED BY THE ASSIGNOR, OR BY DEFENDANT IN ACTION FOR DEBT, CHOSE IN ACTION, OR CHATTEL, WHO HAS HAD NOTICE OF ANY OPPOSING OR CONFLICTING CLAIM.

In the County Court of _____, holden at _____
No. of Plaintiff.

Order 27,
Rule 13a.

Between A. B. Plaintiff,
and
C. D. Defendant.

I, C. D., of _____, the above-named defendant, make oath and say as follows:—

1. The summons in this action was issued on the _____ day of _____, and was served on me on the _____ day of _____.

2. The action is brought to recover the sum of £ _____ which is alleged to have been due from me to _____ of _____, but which sum is alleged to have been assigned by the said _____ to the plaintiff.

[Or, The action is brought to recover [state what].

3. The said sum of £ _____ [or, the sum of £ _____, part of the sum of £ _____] is due from me, [or, or the said _____ is in my possession, but I claim no interest therein, except for charges and costs].

4. I have received notice from the said [assignor] [or, from _____ who claims under the said assignor] that he disputes the assignment of the said sum of £ _____ [or, of £ _____, part of the said sum of £ _____] to the plaintiff.

Or, I have received notice from _____, of _____, that the right to the said subject-matter of this action [or, to part of the said subject-matter of this action] is claimed by him.

INTERPLEADER.

5. I admit the claim of the plaintiff to £ , part of the said sum of £ , which is not claimed by the said [or, I admit the claim of the plaintiff to part of the said subject-matter of this action, which is not claimed by the said].

6. I do not in any manner collude with the said [opposing claimant] or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn, &c.

 FORM 25.

INTERPLEADER SUMMONS TO ASSIGNOR OR OTHER PERSON
DISPUTING ASSIGNMENT, OR PERSON MAKING, OPPOSING
OR CONFLICTING CLAIM TO DEBT, CHOSE IN ACTION, OR
CHATTEL SUED FOR.

[Title of Action.]

Order 27,
Rule 13a.

Whereas the defendant in this action (copy of the summons and particulars wherein is hereto annexed) has filed an affidavit (copy whereof is also hereto annexed) stating that he has received notice from you that you dispute the assignment of the subject-matter in this action [or, of £ , part of the subject-matter of this action] [or, that you claim the subject-matter in this action] [or, part of the subject-matter of this action].

You are therefore summoned to appear at a Court to be holden at , on the day of , at in the noon, when the dispute or claim to the subject-matter in this action will be determined, and judgment will be given

determining the rights and claims of the plaintiff, the defendant, and yourself.

Dated this day of , 18 .

Registrar.

To *E. F.*, of, &c. [*here insert name, address, and description of the person to be summoned*].

NOTE.—You are called upon five clear days at least before the day of hearing to leave at the office of the registrar either three copies of a notice that you relinquish your claim, or three copies of particulars stating the grounds on which you dispute the assignment or found your claim to the subject-matter in the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff or his solicitor and one other of such copies to the defendant or his solicitor.

FORM 26.

NOTICE TO PLAINTIFF WHERE INTERPLEADER SUMMONS
ISSUED TO ASSIGNOR OR OTHER PERSON DISPUTING
ASSIGNMENT, OR PERSON MAKING, OPPOSING OR CON-
FLICTING CLAIM TO DEBT, CHOSE IN ACTION, OR
CHATTEL SUED FOR.

[*Title of Action.*]

Whereas the defendant in this action has filed an affidavit *Order 27,*
(copy whereof is hereto annexed) stating that he has received *Rule 13a.*
notice from , of , that he disputes the assignment
of the subject-matter in this action [or, of £ , part of
the subject-matter of this action] [or, that he claims the
subject-matter in this action] [or, part of the subject-
matter of this action].

Take notice, that a summons has been issued to the said
 , to appear at a Court to be holden at , on the

INTERPLEADER.

day of _____, at _____ in the _____ noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject-matter in this action will be determined, and judgment will be given determining the rights and claims of yourself, the defendant, and the said _____.

Dated this _____ day of _____.

Registrar.

To the above-named plaintiff.

NOTE.—*The claimant is called upon five clear days at least before the day of hearing to leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment, or founds his claim to the subject-matter in the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff or his solicitor and one other of such copies to the defendant or his solicitor.*

FORM 27.

NOTICE TO DEFENDANT OF ISSUE OF INTERPLEADER
SUMMONS.

[*Title of Action.*]

Order 27,
Rule 13a.

Whereas you have filed an affidavit stating that you have received notice from _____, of _____, that he disputes the assignment of the subject-matter in this action [*or, of £ _____, part of the subject-matter of this action*] [*or, that he claims the subject-matter in this action*] [*or, _____ part of the subject-matter of this action*].

Take notice, that a summons has been issued to the said _____, to appear at a Court to be holden at _____, on the _____ day of _____, at _____ in the _____ noon, and that the hearing of this action has been adjourned to the same place, day, and hour, when the dispute or claim to the subject-

matter in this action will be determined, and judgment will be given determining the rights and claims of the plaintiff, yourself, and the said .

Dated the day of .

Registrar.

To the above-named defendant.

NOTE.—*The claimant is called upon five clear days at least before the day of hearing to leave at the office of the registrar either three copies of a notice that he relinquishes his claim, or three copies of particulars stating the grounds on which he disputes the assignment or founds his claim to the subject-matter in the action; and the registrar is required to forthwith send by post one of such copies to the plaintiff or his solicitor and one other of such copies to the defendant or his solicitor.*

FORM 28.

PARTICULARS OF GROUNDS OF WHICH ASSIGNMENT IS DISPUTED OR SUBJECT-MATTER CLAIMED.

[Title as in No. 29.]

Take notice, that I dispute the assignment of the subject-matter in this action to the plaintiff [or, of £ , part of the subject-matter of this action], and that the grounds on which I dispute the same are

[state grounds].

[or, Take notice, that I claim to be entitled to the subject-matter in this action [or, to part of the subject-matter of this action], and that the grounds of my claim are

[state grounds].

[or, Take notice, that I relinquish my claim to the subject-matter of this action].

E. F.

To the registrar of the Court
and

To the plaintiff, A. B., and
the defendant, C. D.

INTERPLEADER.

FORM 29.

ORDER WHERE ASSIGNMENT IS INVALID OR OPPOSING CLAIM
IS SUSTAINED.

In the County Court of . . . , holden at . . .
No. of Plaintiff.

Between *A. B.* . . . Plaintiff,
C. D. . . . Defendant,
and

E. F. . . . Made party by summons, dated
the . . . day of . . .

*Order 27,
Rule 13a.*

It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that there is no such assignment as alleged [*or*, touching the claim of the plaintiff to the subject-matter of this action, that he has no claim thereto], and that the said *E. F.* do recover against the plaintiff the sum of £ . . . for costs, and that the defendant do recover against the plaintiff the sum of £ . . . for costs.

It is further adjudged that the said *E. F.* do recover against the defendant the sum of £ . . . for debt, and the sum of £ . . . for costs, amounting together to the sum of £ . . .

It is ordered that the plaintiff do pay the sum of £ . . . , and the sum of £ . . . , to the registrar on, &c.

And it is further ordered that the defendant do pay the sum of £ . . . to the registrar, &c.

[*If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.*]

FORM 30.

ORDER WHERE ASSIGNMENT IS VALID OR OPPOSING CLAIM
FAILS.*[Heading as in last Form.]*

It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that the said assignment is good [*Order 27, Rule 13a.* or, touching the claim of the plaintiff to the subject-matter of this action, that such claim is valid], and that the plaintiff do recover against *E. F.* the sum of £ for costs; and that the defendant do recover from the said *E. F.* the sum of £ for costs.

It is further adjudged that the plaintiff do recover against the defendant the sum of £ for debt, and £ for costs, amounting together to the sum of £ .

It is ordered that *E. F.* do pay the sum of £ and the sum of £ to the registrar of the Court, on the day of .

And it is further ordered that the defendant do pay the sum of £ to the registrar on the day of [*or,* by instalments of for every days, the first instalment to be paid on the day of , 18].

[If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.]

FORM 31.

ORDER WHERE ASSIGNMENT IS INVALID OR OPPOSING CLAIM
IS SUSTAINED, AND DEFENDANT FILES A COUNTER-CLAIM
AGAINST PLAINTIFF.

[*Heading as in Form 29.*]

*Order 27,
Rule 13a.*

It is this day adjudged, touching the dispute as to the assignment of the subject-matter of this action to the plaintiff, that there is no such assignment as alleged [*or, touching the claim of the plaintiff to the subject-matter of this action, that he has no claim thereto*], and that the counter-claim of £ against the plaintiff by the defendant is sustained [*or, is not sustained*].

It is adjudged that *E. F.* do recover against the defendant the sum of £ for debt, together with the sum of £ for costs, amounting together to the sum of £ .

It is further adjudged that the defendant do recover against the plaintiff the sum of £ in respect of his counter-claim and the sum of £ for costs, amounting together to the sum of £ [*or, that judgment be entered for the plaintiff upon the counter-claim with costs*].

It is ordered that the defendant do pay the sum of £ , together with the sum of £ , to the registrar on, &c.

It is further ordered that the plaintiff do pay the sum of £ , and the sum of £ , to the registrar on, &c. [*or, that the defendant do pay to the plaintiff the further sum of £ for costs of counter-claim.*]

[*If the subject-matter of the action is a chose in action or chattel, the order to be framed accordingly.*]

INDEX.

ACTION

- in which before 1831 interpleader existed at Common Law, 1, 2.
- of debt, detinue, trover and assumpsit under Act of 1831..9.
- for unliquidated damages, 10.
- application for interpleader, where one or more actions already commenced, 52.
- stay of pending, on hearing of summons, 54—55.
- claimant may be made defendant in, 65.
- what may be brought independently of interpleader proceedings, 113—117.
- stay of, in County Court proceedings, 146, 147.

AFFIDAVIT

- of applicant and claimants on hearing of summons, 54—56.
- by whom to be sworn, 56.
- sheriff's, in support of summons, 102.
- claimant's, 104.
- not required by execution creditor, 104.
- forms of, 171, 172, 181, 182.

APPEAL

- does not lie from summary decision, save from Master to Judge, 57—59.
- lies from order transferring matter to County Court, 63.
 - substituting defendants, 65.
 - directing special case, 66.
 - directing issue, 68.
- lies from judge's judgment on jury's verdict, 86.
 - judgment on special case, 66.
- does not lie from judgment *at chambers* on jury's findings, 88.
- when it lies from judgment of County Court judge, 154.

ASSIGNEE,

interpleader by, of debt or chose in action under sub-sect. 6,
§ 25 of J. A. 1873..8, 9, 22.
when in County Court, can interplead, 154.
forms of proceedings in County Court when assignee inter-
pleads, 217—224.

AUCTIONEER,

when he can interplead, 13, 14, 16.

BILL OF EXCHANGE,

when acceptor can interplead, 11.
when he cannot, 17.

BILL OF SALE,

position of holder of, in interpleader's issue, 76.
setting up *jus tertii* by holder of, 76.
determination under Ord. LVII. r. 12, when claimant claims
under, 106—109.
determination under § 13 of C. L. P. Act, 1860, when claimant
claims under, 150.

BOND

of interpleader, its use and form, 111, 189.
effect of, if tendered unstamped, 111.

CERTIORARI,

interpleader proceedings cannot be removed into High Court
by, 154.

CHAMBERS,

interpleader proceedings commence at, 51, 102.
appeal from, 57—59.
findings, or verdict at trial remitted to, 86, 88.

CHANCERY,

old practice by bill in, 2—4.
common law practice applies in, 5, 127—128.
forms in, 129, 189.
note on practice in, 127—129.

CLAIMANT,

what must be subject-matter of his claim, 11, 12.
may claim a lien, 14, 37.

CLAIMANT—*continued*.

- rights to be asserted between plaintiff and, 17—19.
- effect of claim being obviously good or bad, 35—37.
- when landlord is, 36, 37.
- may be an infant, 38.
- judgment debtor can be, 38.
- equitable claim, 29, 45.
- action by, against sheriff, 113, 114.
- action by, against execution creditor, 115—117.
- actions by, in respect of County Court proceedings, 132.
- costs of, in ordinary interpleader, 92—98.
- sheriff's interpleader, 126—127.

COLLUSION,

- must not exist, 14—16, 39, 40.
- inference of, from position of undersheriff, 40.
- sheriff need not deny, 102.

COLONIES,

- Act does not apply to, 21.

COSTS,

- how dealt with in ordinary interpleader, 92—98.
- apportionment of, when allowed, 95—97.
- when dealt with, 98.
- in sheriff's interpleader, 120—123.
- in County Court, 152—153.

COUNTY COURTS,

- jurisdiction of, 131.
- proceedings in, 131—155.
- appeal from, 154.
- transfer to, from High Court, 59—65.

CROWN,

- Interpleader Act did not apply in case of, 21.

DAMAGES,

- claims for unliquidated, not within Act, 10.
- course as to damages *ultra* the main dispute, 27, 28.
- in action for trespass against sheriff or execution creditor, 114—116.

DELAY,

- applicant must not be guilty of, 20, 21.
- sheriff must not be guilty of, 41—43.
- may be explained, 43, 44.

DISTRICT REGISTRAR

- possesses powers of a Master, 52.

EVIDENCE

- must be relevant to issue, 71, 72.
- admissions for purposes of issue, 71.
- cases on reception and rejection of, 83—85.

EXECUTION CREDITOR

- must appear on summons, 103.
- unless he abandons his claim, 103.
- generally made defendant in the issue, 73.
- actions by or against, independent of interpleader proceedings, 113—116.
- his right to return of writ, 119.
- costs of, 126—127.
- claim by, against High Bailiff, 147.

FOREIGNER,

- interpleader allowed, though a claimant, 28, 29.
- must give security for costs as in ordinary action, 28, 89—92.

FORMS

- in stakeholder's interpleader, 170—179.
- in sheriff's interpleader, 180—189.
- in County Court interpleader, 190—224.
- used in Chancery, 129, 189.

HIGH BAILIFF,

- when he may interplead in County Court, 133, 134.
- claim against him for damages by claimant and execution creditor, 147.
- costs of, 152.

INDEMNITY,

- party refusing, may yet interplead, 15, 16, 38.
- party who has taken, cannot interplead, 15, 38, 39.
- when implied from relations of sheriff and undersheriff, 39, 40.

INTEREST,

- applicant must have none in subject-matter, 13, 14.
- sheriff must have none, 39, 40.

INTERPLEADER

- at common law before 1831...1, 2.
- in Chancery till 1875...2, 3, 4.
- at common law since 183...14 *et seq.*
- when stakeholder can interplead, 7—29.
- when sheriff can, 29—46.
- practice in, when stakeholder interpleads, 47—98.
- practice in, when sheriff interpleads, 98—130.
- in County Courts, 131—155.

ISSUE,

- order directing it, 67.
- feigned, now obsolete, 68.
- preparation thereof, 68, 69.
- amendment of, 70.
- object of it, 70, 71.
- cases on its construction, 71—78.
- postponement of it, 81.
- trial of, 83.
- reception of evidence thereat, 83—85.
- proceedings subsequent to trial thereof, 85 *et seq.*
- form of issue, 186, 187.

JUDGE,

- appeal to, from Master, 57.
- no appeal from, to Court, in case of summary decision, 57, 58.
- when Master stands in his place, 51.
- can give judgment on jury's findings, 88.
- his powers in Chancery Division, 128.
- of County Court, his duty when particulars of claim are insufficient, 151, 152.

JUS TERTII,

rule as to setting up, 78, 79.
cases as to setting up, 72—78.

LANDLORD,

his right to rent, 36, 37.
his right to costs if summoned to interplead, 126.
as claimant claiming rent in County Court, 146.
form of summons to, in such case, 195, 196.
particulars of claim for rent, 193.

LIEN,

right to interplead when applicant claims, 14.
right to interplead when claimant claims, 13, 14, 37.

MASTER,

his jurisdiction in interpleader, 51.

PARTICULARS OF CLAIM

to be delivered by claimant in County Court, 147.
nature of them, and cases thereon, 148—150.

PURCHASER

from bailiff not within jurisdiction of County Court, in interpleader proceedings, 146.
position of, if made party to an issue, 84.
from sheriff, evidence when he is claimant, 85.

REGISTRAR

of County Court; his duties in interpleader, 145, 146.

RULES

of Supreme Court, 1875..5, 169.
of Supreme Court, 1883..5, 7, 8, 29, 30, 48—50, 98—100, 157—161.
of County Court, 1889..134—143.

SECURITY,

when claimant called on to give, 111, 112.

SECURITY FOR COSTS,

when and from whom required, 89—92.

SHERIFF,

requisites to entitle him to interplead, 30—45.

practice when he interpleads, 98—127.

actions against, 113—115.

attachment against, 43, 120.

costs of, 120 *et seq.*

SPECIAL CASE,

when it may be stated, 66, 110.

forms of order directing, 177, 187.

STAKEHOLDER,

requisites to entitle him to interplead, 7—29.

practice when proceedings are instituted by, 48—98.

costs of, 92 *et seq.*

STANNARIES,

Court of, jurisdiction in interpleader, 21.

STATUTES CITED,

43 Geo. III. c. 46..123.

1 & 2 Will. IV. c. 58 (Interpleader Act, 1831), 4, 5, 163—167.

1 & 2 Vict. c. 45..167.

8 & 9 Vict. c. 96 (County Courts Act, 1845), 131, 132.

8 & 9 Vict. c. 109..167.

11 & 12 Vict. c. 86..21.

23 & 24 Vict. c. 126 (Common Law Procedure Act, 1860), 5, 50,
57, 58, 100, 167—169.

30 & 31 Vict. c. 142 (County Courts Act, 1867), 132.

38 & 39 Vict. c. 77 (Judicature Act, 1873), 8, 9, 22, 29, 161.

41 & 42 Vict. c. 31..76.

46 & 47 Vict. c. 49..155.

46 & 47 Vict. c. 52 (Bankruptcy Act, 1883), 117, 118, 129, 130.

47 & 48 Vict. c. 61..59, 60.

SUMMARY DETERMINATION,

when available, 56—58, 106.

no appeal from, 57, 58.

under Ord. LVII. r. 12..106—109.

SUMMONS,

interpleader proceedings instituted by, 51, 102, 145, 146.
parties to, 52, 102.
service of, 53, 102.
forms of, 170, 180, 193—198.

TITLE DEEDS

within the Act, 10.

TRIAL

of issue, 83.
evidence at; and cases thereon, 83—85.
proceedings subsequent to, 85—88.
in Chancery Division, 127—129.
course as to, in County Courts, 150—152.

UNDER SHERIFF,

result of his relation to sheriff in interpleader, 39, 40.

WHARFINGER,

his right to interplead, 13, 14.

THE END.

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